

DISSERTATION:

THE PRINCIPLE OF SOLIDARITY: A RESTATEMENT OF JOHN RAWLS' LAW OF PEOPLES

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## CHAPTER ONE

### INSTEAD OF INTRODUCTION: GLOBAL JUSTICE DEBATE- CONCEPTIONS AND MISCONCEPTIONS

“Conceptions of justice must be justified by the conditions of our life as we know it or not at all.”

John Rawls, *A Theory of Justice*, p. 454

The intention of my work is three-fold. First, I will outline the current debate on global justice by clarifying the concepts involved in the debate and illustrating the terrain on which the debate takes place. I will point to what I consider the weaknesses of existing theories and explain why I take Rawls' standpoint/theory to be the most plausible one. Second, I present my interpretation of Rawls' view on global justice. His conception stands out due to its structure and its heuristic momentum; I will, however, criticize it for being incomplete and therefore not able to adequately address the crucial challenges of changing world politics. Finally, I will point to the possible amelioration of Rawls' global justice theory through the *principle of solidarity*. The notion of the principle of solidarity has been widely used by international lawyers and politicians; however, its conceptual value is not clear. In accounting for it in the framework of Rawls' thought, whose intention is to present a “particular conception of rights and justice that applies to the principles and norms of international law and practice” (Rawls 1999: 3), I seek to show how Rawls' version of justice beyond the nation-state is modifiable in the face of new challenges, and thus normatively valuable for the current state of global affairs.

#### 1. GLOBAL JUSTICE DEBATE – CONCEPTIONS AND MISCONCEPTIONS

Though literature on global justice has been extremely prolific in recent decades, there is still a great deal of disagreement about what ‘global justice’ actually is, in addition to the question of along which argumentation lines its practice should develop. In order to better understand the problem we are dealing with, I will start by offering the reader a conceptual, methodological and functional analysis of ‘global justice’.

By conceptual analysis I refer to the analysis of the two concepts of which 'global justice' is comprised: 'global' and 'justice'. By methodological analysis I intend the different ways in which theorists build and justify their conceptions. Finally, the functional analysis focuses on the ultimate goals of the different theories and their connection to political reality. Since global justice is a part of practical philosophy, it is important to establish its value for political practice, that is, how utopian or fact sensitive it might be.

Unfortunately, it is impossible to discuss in a greater extent all of the authors that have made valuable contributions to the global justice debate. I will instead concentrate on the very few, who, being among the most eminent advocates of a specific line of thinking, engaged in a direct discussion with Rawls or Rawls' views. My apology goes to those that are omitted.

## 1.1. CONCEPTUAL ANALYSES

"We do not live in a just world. This may be the least controversial claim one could make in political theory. But it is much less clear what, if anything, justice on a world scale might mean, or what the hope for justice should lead us to want in the domain of international or global institutions, and in the policies of states that are in a position to affect the world order."

Thomas Nagel, "The Problem of Global Justice" (1993)

This opening paragraph from Thomas Nagel's famous article "The Problem of Global Justice" brings to the forefront the main controversy around the subject of a relatively new aspect of political philosophy called 'global justice'. It is a matter of intuitive conviction that the world we live in is not just. The definition of 'justice' on a global scale, however vastly that is perceived, is a matter of great disagreement. Consequently, the conceptual analysis poses a basic theoretical question about defining the possible meanings of 'global justice'. The answer looks at theoretical parameters for any current or future debate on global justice by analyzing the concepts 'global' and 'justice'. By identifying 'justice', I identify the domain of my research, while by 'global' I am looking for an answer about the scope of the problem.

Justice is one of the key concepts of political philosophy. Within the history of philosophy we find two ruling (and consequently opposed) paradigms in our thinking about justice. The first was established in the fourth century BC by Aristotle and views justice as an individual virtue. The second was developed in the twentieth century by John Rawls and considers justice a virtue of social institutions. These two views on justice differ in how their authors view the role of normativity in political theory, i.e. political philosophy. The Aristotelian paradigm views political theory as a normative theory of political agency

whereas Rawlsian thought sees political theory as a normative theory of institutions (cf. Chwaszcza 2007: 65).

On the other hand, 'global' is the leading concept used in modern sociology when trying to account for the process of globalization. It points to the way in which we should organize our thinking about the actors of the changing political landscape. There are three possibilities: We can either perceive the changing political constellations due to globalization as undermining the political influence of states and indicating the necessity for socio-political thinking in terms of individuals; we could deny the disempowerment of the state and claim that national interests are of highest importance; finally, we could recognize that the state loses some of its powers but nonetheless remains an important player. I will begin by explaining the two justice paradigms before applying the gained knowledge to the global context.

### 1.1.1. ARISTOTELIAN PARADIGM

"[W]e see that all men mean by justice that kind of state of character which makes people disposed to do what is just and makes them act justly and wish for what is just; and similarly by injustice that state which makes them act unjustly and wish for what is unjust"

Aristotle NE: 1129a7-10

Aristotle introduces his thinking about justice in the fifth book of *Nicomachean Ethics*<sup>1</sup>. He differentiates between two types of justice: the universal and the particular. Universal justice relates to the lawfulness within society, or in other words, with the observance of the customs and rules of that society. In the case of Aristotle's concept of universal justice, there are, strictly speaking, no constraints. Any lawful society is just. If we take his teleological view literally, then society should promote happiness of the political community in some sense: by promoting the happiness of all, of those who are the best, or those who hold power (cf. Aristotle NE: 1129 b 14-19; Miller, Jr. 1995: 68).

Particular justice is an ethical virtue, which belongs to the virtues of character. All virtues of character, and there are twelve of them, lie in a mean between two excessive emotions (Aristotle NE: 1129 a 3-5). Particular justice, therefore, can be described as a kind of fairness, a fair or equal treatment of others and of oneself. This again signifies that justice is a mean between two defective character traits: greediness on the one hand and modesty on the other. It is a mean between taking too much and taking too little of some socially or economically valuable good.

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<sup>1</sup>Aristoteles discusses justice in *Politics* and in *Eudamonian Ethics*. However, I will limit myself in discussing his views on justice presented solely in the *Nicomachean Ethics* since I use Aristotle's notion of justice only as a blueprint for some modern conceptions, and distance myself from some of his elaborate thinking about societies, such as his notions on slave-holding economies or antiquated notions of commerce, or his view on the position of women.

According to Aristotle, everyone has a propensity (*hexis*) to act justly and be just. To act in such a manner is a matter of individual choice, and one that needs to be trained. Training or habituation is practiced by society. It is the role of society to provide the orientation point on which behaviour is considered just, and which is not, as well as to educate its people about just behaviour. Particular actions are then to be judged as just or unjust on the merit system set by the respective society; in democracies the standard is freedom, in oligarchies the standard is wealth or noble birth and in aristocracies it is virtue (cf. Aristotle NE: 1131a25-30). In this way, individual behaviour is adjusted to the prerequisites of society.

Universal justice puts constraints on particular justice that is, according to Aristotle, genuine justice. Aristotle divides this genuine or particular justice into three sub- categories (Miller, Jr. 1995: 80): distributive justice, retributive justice and commercial justice<sup>2</sup>. Distributive justice deals with the distribution of goods from the third person-perspective, while retributive and commercial justice is concerned with the direct transactions between givers and receiver.

Distributive justice presupposes that there is some good that needs to be distributed and many people that demand it. According to just distribution everyone gets just as much as they deserve. If the good in question is office or honour, then the most competent should get the higher office and the person with the higher moral worth should be prized. The distribution couples the personal virtue with its share. Mathematically, this kind of justice can be summarized though geometrical proportion, or analogy:

$A : B = C : D$  (A, B are persons; C, D are respective shares of some divisible good).

The other two types of particular justice either correct the injury inflicted on one man by another (retributive justice), or regulate the exchange of goods (commercial justice). Retributive transactions are just if they compensate for the damage done. The retribution should be sort of a mean between the gain and loss; the mathematical expression of this kind of justice is that of arithmetic mean:

$A - B = C + B$  (before the interaction A and C were equal)

Though the mathematical expression is rather simple, there is more to the retribution than a simple “eye-for-an-eye” doctrine. Terms such as “gain” and “loss” that measure the injustice done are taken from commerce and are inappropriate for cases of adultery, murder and assault, which also acquire retribution. Hence retributive justice is a mean between the impaired position of the injured party and the improved position of the injuring party (Aristotle NE: 1132 a 9-10; Hardie 1968: 192). The true mean, which is to be decided upon by a judge, is again dependable on the merits or virtues of persons. It should not only inflict an adequate monetary or physical punishment but also an adequate intellectual

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<sup>2</sup>It is an unsettled question among the commentators whether or not commercial justice is a separate kind of justice or falls under the retributive voluntarily justice. Hardy thinks it does while Miller and Ross take it to be a separate kind.



or moral one (Aristotle NE 1132 b28-31)<sup>3</sup>.

At first glance, commercial justice has nothing to do with the analogy between goods and personal characteristics, but with the sole value of the goods. The mathematical reasoning in the background is again that of proportion. The value of one good is directly traded for the value of another, e.g. veal may be worth three pairs of shoes, and therefore the trade ratio is one to three no matter how much better as a person the shoemaker is compared to the shepherd. However, this view gets somewhat more complicated by Aristotle's statement that the value of goods needs to be fixed before any goods are exchanged (Aristotle NE 1133 b1-3). This again points to a kind of meritocracy doctrine that decides upon the value of goods before they are officially on the market, and hence has a direct influence on the market-economy.

In Aristotle's view, justice is the virtue of a man who abides by the general laws, who does not take more or less than what is due to him and who does not sell or trade his goods for more or less than the general market state pre-regulated rules demand. The word is about a just man, not about the just constitutions. However, the ancient Greeks did not conceive of something resembling the individualization principle: an individual as independent, free and equal, reflecting and self-sufficient. Ancient Greeks perceived an individual as an inseparable part of society; an individual is defined through society. Society sets a value that an individual follows. Virtuous is the man who follows the prescriptions of society in the right measure. Justice is the highest of all virtues because its practice takes the others into account as the others are affected through it<sup>4</sup>. Michael Sandel observes:

"Aristotle's theory of justice is one of merit or desert. This means that qualities or values the institutions call forth have a worth antecedent to their institutional valuation, and so provide an independent test of the justice of the institutions themselves. In other words the right and just is subordinated to the specific conception of the good. Institutions in the Aristotelian society are to be formed in such a way as to praise or rectify those actions that epitomize some previously set good, like freedom, noble birth, or wealth, to name just a few. Hence, the institutional arrangements that place a premium on these noble qualities and cherished values are in virtue of that, the worthier, quite apart from the purposes they advance" (Sandel 1982: 76).

### 1.1.2. RAWLSIAN PARADIGM

"Justice is the first virtue of social institutions, as truth is of system of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust."  
John Rawls, *A Theory*

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<sup>3</sup>Aristotle's account of retributive justice is unsatisfactory. Notions like crime and punishment are not considered and it is not clear what role merit plays in this part of his theory.

<sup>4</sup>Aristotle admits the possibility of unjust laws. He does not discuss in great detail either the origins of laws as such or the justice as lawfulness.

John Rawls famously opens his *A Theory of Justice* (TJ) with the statement that “justice is the first virtue of social institutions” (Rawls 1971: 3). This view is diametrically opposed to that of Aristotle. In Rawls’ view, institutions are not constrained by the specific cherished quality or virtue. No virtue has antecedent or pre-institutional moral status. This reflects the priority of the right over the good.

According to Rawls, questions of whether men themselves are virtuous or not are not of primary interest for political philosophers. It is a matter of fact that people are born into society with unequal natural endowments such as temperament, intelligence, talents and abilities. It is also a matter of fact that they may be born into different social classes which then influence the development of these natural assets. Finally, it is sometimes a matter of sheer luck, ill or good fortune whether someone is to live up to his or her abilities or not. These are all inequalities which are inevitable in any society, yet they cannot be justified; or even more so, they should not be supported by an appeal to the notions of merit or desert (cf. TJ: 7; JF: 7). It is the society’s institutions, Rawls argues, that should respond to these inequalities. If they do, they are just; it is the way they respond that constitutes the meaning of justice.

Hence, what it is to be judged as just or unjust is not a moral value of a person<sup>5</sup>, natural contingencies of his/her character and social contingencies in which he/she lives, but the system of rules, the so-called social institutions that arrange the relations between people. Social institutions as a system of rules are manmade and changeable, while social and natural personal characteristics are not.

Rawls is trying to rationalize the form of social institutions that would correspond to the meaning of justice. He establishes the fact of natural and social contingencies among people, yet at the same time he underlines their sameness: the desire to develop and practice their moral powers. According to Rawls, all individuals are endowed with two moral powers: a capacity to form, revise and practice some conception of a good life and the capacity for a sense of justice<sup>6</sup>. In addition, and in concordance with liberal tradition, Rawls perceives individuals as being free and equal in practicing their moral powers.

It is the diversity in the conceptions of a good life, and an equal respect for each of them, that poses a problem for the arrangement of social institutions<sup>7</sup>. Rawls thinks that the true expression of justice, one

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<sup>5</sup>Rawls is not denying the fact that moral desert plays a role in society. On the contrary, it plays a great role in each person’s conception of a good life. Society should be arranged in such a manner as to respect these. However, particular conceptions of a good life, in their overall comprehensive forms, cannot be a part of a substantive theory of political justice. Theory of political justice needs to account for all the different conceptions of the good life since their origination can also be traced back to the contingencies of origin, traditions and talents. (JF: 73)

<sup>6</sup>Two moral powers that all people are said to be endowed with may be read in analogue to Aristotle’s *hexis*, or propensity for justice, which Aristotle says every man has. However, in Aristotle, propensity for justice is not to be differentiated from that for good.

<sup>7</sup>Comprehensive doctrines need to be reasonable in order for them to be valued as equal (PL: 25; 59).

that would correspond to our fully developed sense of justice, is the one that accounts for different conceptions of good, leaving these conceptions sufficient room to further develop while finding a common political ground for all<sup>8</sup>. Again, this does not imply that the society *a priori* must be comprised by many different comprehensive doctrines. Rather it means that it may not suppress the development of such, nor may its intuitions allow for a ruling political doctrine to favour one over the others.

Having settled these preliminaries, we turn to the content of Rawls' "justice- paradigm". According to him, the first requirement is to create rules that would allow everyone to practice their basic liberties. The second requirement expresses rules for the maximization of everyone's legitimate expectations. Under basic liberties Rawls considers: freedom of thought and liberty of conscience, political liberties, liberty and integrity of the person, and rights and liberties covered by the rule of law (PL: 291; JF: 44). Basic liberties are intended to secure the development of moral powers that are undisturbed by social and natural contingencies. Consequently, freedom of speech should be guaranteed to everyone no matter what social class one belongs to or how talented one is. Furthermore, everyone should have an equal opportunity to run for office, again no matter what background or educational parameters the person has. This first principle of justice, which has primacy over the second, is actually making natural and social contingencies lose their importance in forming social institutions. In other words, it prevents discrimination in the political sphere on the basis of social and natural contingencies. Therefore, the principle that protects the equal scheme of basic liberties, compatible with the same scheme of liberties for all, protects the negative freedom of all members of a society. They are protected from biased political discrimination from anyone imposing their way of life on them. Additionally, this principle opens the space for everyone to practice their positive freedom; that is, to openly practice their conception of good and in cooperation with others to sharpen their sense of justice.

The second requirement of Rawls' justice is for social institutions to be organized in such a way that jobs and positions are open to all, respective of their ability to do the job and not their potential talent or social status. Furthermore, society shall organize the distribution of the productive surplus in such a way so that those that drew worst in a natural and social lottery<sup>9</sup> shall profit from it. This simply means that those who are influential or successful will need to pay taxes for the social support of the poor, or will have to create jobs for the less advantaged. Thus, society creates a framework in which everyone may develop his/her naturally given capacities to the fullest, no matter the individual virtues one has<sup>10</sup>.

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<sup>8</sup>This he calls respectively: the fact of reasonable pluralism and overlapping consensus (PL: 58; 150-154).

<sup>9</sup>Whether a person is more or less advantaged is, according to Rawls, measured by the amount of primary goods they possess. These so-called primary goods are goods it is assumed that everyone in the society wants. Rawls identifies them as follows: rights and liberties; freedom of movement and free choice of occupation; powers and prerogatives of offices; income and wealth; social reasons for self-respect (TJ: § 67; PL: 178-187; JF: 57-58).

<sup>10</sup>And if they have none, society will still make sure that they have a decent life. See Rawls' answer to Sen in LP: 13 ft. 3

Hence Rawls' principles for just domestic institutions read as follows:

- a. "Each person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all.
- b. Social and economic inequalities are to satisfy two conditions. First, they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society." (PL: 291)

Referring to the Rawlsian paradigm, there is another important distinction between "choices" and "circumstances" to be made, which has been pointed out by Percy Lehning, (cf. Lehning 2006: 25). Rawls' conception of justice does not account for the wrong or right voluntary actions or choices one makes in life. The inequalities that arise from those are justified. Social institutions should be sensitive to those inequalities that are undeserved, while at the same time allowing for the inequalities that emerge through independent reasoning, i.e. free choices. Rawls' theory tries to create an equilibrium between the respect for differences in individuals' choices and the necessity for a mitigation of differences in an individual's living conditions. Within the Aristotelian framework, choices are dictated by the circumstances.

Rawls' social design may be summarized by the three mottos of liberal revolutions: liberty, equality and fraternity<sup>11</sup>. Everyone is to be considered free, to decide upon his/her life plan, and everyone's liberty is to be respected. Everyone is to be given an equal opportunity, in the sense that natural and social contingencies should not count as an obstacle to life choices. Finally, society's institutions should be designed to consistently provide support to those who were least lucky in the natural lottery. In doing so, society mitigates undeserved inequalities and secures the undisturbed practice of freedom and equality. Society does not impede freedom of choice; it creates the framework for this freedom to fully develop.<sup>12</sup>

### Summary

Aristotle says that justice is a virtue of character; Rawls maintains that it is virtue of social institutions. According to Aristotle, social institutions settle the matter of moral desert by affirming a specific philosophical view of a good life: aristocratic, democratic, oligarchic, etc. The moral desert of institutions is not put into question.<sup>13</sup> Observed from the Aristotelian perspective, the Rawlsian paradigm is a meta-theory that follows Aristotelian reasoning and puts the lawfulness of specific constraints in

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<sup>11</sup>The parallel between Rawls' principles of justice and three mottos of French Revolution: *liberte, egalite, fraternite* is obvious and explicitly stated by Rawls himself in TJ:105.

<sup>12</sup> Rawls' idea of society presupposes by no means a paternalistic society. On the idea of paternalism cf. §6.1.1.

<sup>13</sup> Aristotle asks the question whether the laws of a certain state can be unjust: the dilemma refers to specific laws, not the overall value they express. That is, oligarchs would never doubt the rightness of the primacy of those with great wealth, though it may be doubted whether the constitution expresses this value in the right sense.

question. Whether men themselves are just or unjust does not play a role in Rawlsian reasoning. It is important that they all have a propensity for a sense of justice. To practice one's sense of justice differs from a *de facto* just behaviour in the sense that it acknowledges the existence of different conceptions of the good life, and thus acknowledges that different social unions may refer to different behaviour as just in their "private" usage of the word. Sense of justice, if developed,<sup>14</sup> accounts for an independent thinking about the values as such, and searches for the principles that can express that. In other words, the sense of justice is impartial about particular conceptions that are pre-given. The sense of justice is acquired through independent choices. Aristotelian virtue of justice is a product of pre-given set of circumstances.

This is the main difference between 'Rawlsian' and 'Aristotelian' conceptions of justice. This difference will set a tone for the divergence between liberal and communitarian philosophy. Speaking in highly general terms, the difference between the two conceptions is the difference between independent, free thinking about the society and its justice, the one that respects the thinking of others as being equally free and independent (Rawlsian conception), and thinking that is embedded in the social, cultural, and historical moment and not being able to reflect unambiguously on it (Aristotelian version).

### 1.1.3. ARISTOTELIAN AND RAWLSIAN PARADIGM IN A GLOBAL CONTEXT

"Globalization: the process by which businesses or other organizations develop international influence or start operating on an international scale. "

Oxford English Dictionary,

[www.oed.com](http://www.oed.com)

What has been said so far corresponds to the concept of justice that regulates social relations within a domestic society, i.e. among a certain (limited) number of persons who, even if having different conceptions of personal good, in many cases share the same historical and religious heritage, same traditions and same concept of security. The application of either of the discussed paradigms of justice beyond this bounded society poses questions since the very scope of that "beyond" is under-defined. The discussion about "international", "transnational" or "global" justice points to the same problem which arises with the emerging of the process and the theories of so-called globalization. Hence, I start by explaining this process.

Globalization typically refers to the economic, social and political process that is characterized primarily

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<sup>14</sup>Rawls follows Piaget and Kohlberg in their work on the moral development of a person. Rawls summarizes Kohlberg's six stages of moral development into three: the morality of authority, morality of association and morality of principles. It is this third stage: morality of principles that is present in the just society and that accounts for the fully developed sense of justice. Previous stages account for primitive societies. (TJ: 490-510; CP: 96-117).

by the expansion of markets, free flow of capital, investments, goods and services. As a consequence of globalization, the importance of national borders, or “bounded societies”, has been reduced. Nation-states have lost power and influence—even sovereignty—because they have to (or choose to) tailor their policies to the needs of mobile capital, which in turn has had consequences on the viability of social democracy. The welfare state has lost its independence, as it has been reduced to fit the wishes of business interests. Such behaviour is said to lead to the decline of national cultures and to the creation of one homogenized (or sometimes hybridized) world culture. National differences have become less marked as people consume culture from around the world rather than being dependent on that of their own nation. This is facilitated further by global electronic communications such as the Internet, TV broadcasts, migration, and tourism (Martell 2007: 175).

New actors like multinational corporations gain importance in a political, economic and social world. New challenges that go beyond the single nation-state emerge: influence of external agents on the state’s market and culture; global warming of the atmosphere; new wars; health catastrophes, etc.

The process of globalization can be seen as involving “new forces”, i.e. the expenditure of markets, overreaching communication, general cultural accessibility, and challenges that exceed the powers of a nation-state, all of which point to the necessity for a new way of thinking about the world’s political and social structure. In sociology and political science there are three well-established schools of thinking about globalization. *Globalists*, or particularists, or cosmopolitans advocate that due to the globalization process as explained above, we should reformulate our social and political institutions so that they can account primarily for the individual and his well-being and move away from the methodological nationalism. On the other hand, so-called *statists* argue that exactly in spite of the “new forces”, national cultures, national identities and national economic sovereignty need to be preserved. Otherwise we will end up in a paternalistic, parochial world since the “new forces” are easily directed by the great economic powers. The third school, the so-called *middle-way*, acknowledges the existence of the “new forces” and works with them from a nation-state prospective. This third line of thinking suggests that the nation-state should consciously revise some of its sovereign powers, knowing that others will do so as well, and in that way remain the among the most important decision-makers on the world political scene.<sup>15</sup>

Let me now perform a specific kind of conceptual gymnastics and account for what has been said so far

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<sup>15</sup>In sociology, the debate about the definition and effects of globalization is known as being three-tiered among globalists such as Colin Hey and David Marsh, who advocate the necessity for sociological thinking in terms of individuals; sceptics like Paul Krugman, who denies the disempowerment of states, rather they see cosmopolitan arguments as the way for big powers to impose their policies on the rest of the world; finally, the post-sceptics like David Held and Anthony McGrew advocate a more complex picture of globalization in which it is seen as occurring but without sweeping away all that came before it.

by putting the two concepts, 'global' and 'justice', together. By doing that I am trying to decipher the different theoretical meanings of the phrase. The result is an array of philosophical theories on global justice. The theories are presented in their simplified and very general versions. The categorization undertaken is an approximation and needs further qualification. It is to be taken only as an orientation point and not as a firm substantial analysis. However, I posit that it can be a useful tool in marking the terrain we are ascending. I present my reasoning schematically in Table 1. Theories differ in the paradigm of justice they adopt and the way they perceive the process of globalization.

Table 1.

	<b>Aristotelian<sup>16</sup> paradigm</b>	<b>Rawlsian paradigm</b>
<b>Individual as a basic unit</b>	Libertarianism	Cosmopolitanism
<b>Community as a basic unit</b>	Communitarianism	Liberal Nationalism
<b>"Relaxed-community" as a basic unit</b>	Capabilities approach	Rawlsian approach

I start with the theories that adopt the Aristotelian model of justice and observe the notions that arise in their coping with the conceptual challenges of globalization. Taking the Aristotelian model of justice and interpreting 'global' to mean strengthening the role of the individual leads to viewing and norming the world from a kind of global libertarian view. This philosophical line of thinking gives priority to individual freedom over all other values. It respects the contingencies of history, social circumstances and native endowments and uses them in favour of the one chief virtue, that of personal liberty. In this respect, libertarianism stipulates that individual rights and liberties are to be minimally coordinated by the state. This view rejects any (or almost any) distributive mechanisms. If people respect each other's liberty, all other social and political relations are going to be settled spontaneously. In that respect Hayek criticized the idea that institutions such as economic markets may be called just or unjust, they are, as Hayek states, a "spontaneous order" of individual actions (Hayek 1976: 173). The doctrine of libertarianism works on the basis of the concept of natural entitlements, which are under-defined. They come down to the rights people simply have and are allowed to practice as long as these rights do not disturb others. The obligations towards others are truncated to the respect for their negative liberties, i.e. not harming them, not intervening in their development (Nozick 1974: 179).

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<sup>16</sup>I call these paradigms Aristotelian, or respectively Rawlsian and not Aristotle's or Rawls' because they refer to a way of thinking not the detailed elaboration of Aristotle's or Rawls' views. The distinction between "Rawlsian" and "Rawls", or "Aristotelian" and "Aristotle's", will be used in this work analogue to the distinction Rawls makes between his usage of the words "Kantian" and "Kant's" (CP: 304), i.e. when the direct reference to the theory of a certain philosopher is made, in the way that philosopher makes it, I will use possessive pattern like "Rawls'", however if I make a reference to the way of thinking in the line with the philosophy of a particular philosopher I will use the adjective form, e.g. „Rawlsian“.

By stressing the importance of the minimal influence of the states, it seems natural for these philosophers to advocate institutional minimalism on a global scale. As in the national case, justice is a personal, subjective concept of first and foremost not harming others and developing one's own capacities. The most important advocate of this view is Robert Nozick. Recently a new line of thinking emerged among libertarians, the so-called left-libertarians, who see a need for more global coercion when it comes to the distribution and usage of natural resources. These philosophers, like Michael Otsuka, Matthias Risse, and Philippe Van Parijs, advocate that a basic amount of natural resources should be divided evenly across the globe. Societies are then to be left on their own to either augment their "wealth" or to neglect it. The logic behind this reasoning is that though everybody should be left to find his/her own "right measure", they should all have a true means to do so. Liberty as the utmost social value needs to be real liberty (Van Parijs 1998); meaning liberty which people can actually make use of. In order to actively practice their liberties, such as freedom of thought, people need to have their basic needs fulfilled. Van Parijs suggests that the basic income should be given to all at all times and then to be left to develop freely.

I cannot discuss here in great detail the postulates or the weak points of global libertarianism; it must suffice here to point to the basic problems with this view. First, classical libertarianism assumes something like the "invisible hand" working on the world scale. However, with powerful world economies in sight it is not clear what would prevent the world from falling into either global despotism or global anarchism. Second, left-libertarianism faces the problem of how to decide what the basic needs across the globe are and how to deal with different capacities to use the bundle of commonly distributed goods. Different capacities may be caused by inconvenient natural circumstances, like environment or health disasters. Libertarianism does not offer provisions for dealing with these unexpected factors; therefore, a libertarian conception of justice will not play a further role in our discussion.

An Aristotelian paradigm combined with the strong notion of society, and an awareness of the existence of different societies brings us to the so-called communitarian approach. The basic notion of this school of thought is that individuals are fully defined and shaped by their communities. Community, in which individuals live, shapes all their actions, as well as their psychology (MacIntyre 1981: 203-25). Communitarians reject Rawls' idea of persons as free and equal. Rawls' person can choose, reflect and revise, "stand above and critically survey" (Freeman 2006: 304) social institutions. In a communitarian view, actors engage in thinking as fully embedded personalities, defined and shaped by their social circumstances. Fundamental values that we cherish are simply given to us and on the face of them we pursue our own projects. The idea of the "unencumbered" self does not correspond to the image of an actual person. Commitment to certain values and traditions make people who they are



(Sandel 1982: 15-65). This kind of thinking in the time of globalization makes patriotic feelings even stronger and considers justice as a duty owed foremost to compatriots.

However, these philosophers are ready to defend the worldwide protection of human rights without national partiality. Human rights protection will have to be distinguished from other rights and duties in which compatriots have an advantage. Now, the justification for human rights and their legal enforcement should be left to each country, i.e. each culture to decide on its own. As Charles Taylor argues, we can find in all cultures condemnations of genocide, murder, torture and slavery, but the deep underlying values supporting these common conclusions will belong to the alternative mutually incompatible justifications based on different society's value systems. (Taylor 1999: 125)

The middle-way sees the importance of the states but acknowledges that changes need to be made in their core values. On the other hand, taking justice to be primarily the matter of giving each what he/she deserves, or rather what one needs, is a so-called capabilities approach. Capabilities approach stresses different needs and wants people have and consequently sees them as being capable in different ways, other circumstances aside, in terms of achieving things. Any theory of justice needs to acknowledge that people are different and need different things in different amounts. This view takes such differences into account and works on the theoretical framework that would supply people with what they need for achieving what they are capable of. They criticize Rawls for not putting more stress on the differences among individuals and societies. Amartya Sen, who first introduced this line of thinking, argues that people value their ability to do certain things and to achieve certain types of beings. These "doings" and "beings" he calls "functionings".

Whether people will be capable of doing and achieving their functions depends a great deal on society (Sen 1988: 13), which empowers their capabilities. Thereby, the simple measurement of wealth or the amount of what Rawls calls basic goods does not suffice for the happiness of a person. Like Aristotle, Sen reiterates the familiar argument that wealth is evidently not the good we are seeking, for it is merely useful for the sake of something else (Sen, 1990: 44). Doing justice should be about quality of life, and in considering it we should consider what people are able to achieve. Sen observes that different people and societies typically *differ* in their capacity to convert income and commodities into valuable achievements. For example, a disabled person may require extra resources (wheelchairs, ramps, lifts, etc.) to achieve the same thing (moving around) as an able bodied person. Moreover, a child typically has very different nutritional requirements from a manual labourer, pregnant woman or someone with a parasitic disease. Similarly, the commodity requirements for more complex social achievements (such as "appearing in public without shame" or "entertaining family and friends") typically depend on "cultural" factors such as social convention, custom or status, and class (Sen 1985:25-26; 1990: 70-71).

Sen has also been praised for broadening the informational base of evaluation, refocusing on people as ends in themselves, recognizing human diversity (through differences in personal conversion functions), drawing attention to group disparities (such as those based on gender, race, class, caste or age) and acknowledging that different people, cultures and societies *may* have different values and aspirations.

The capabilities approach has been criticized from several different angles. In many cases key strengths are re-construed as potential weaknesses by critics. First, viewpoints about merits and needs differ and concrete measures of it are incomplete. Martha Nussbaum has done the most notable work on this aspect of the capabilities approach (Nussbaum 2000: 11-15). The second critique asks about the role of the state within the capabilities approach. Sen's answer is that the focus of the state, or any institution for that matter (international organizations included), is to make human flourishing possible and not be focused on economic growth. Hence, national and international organizations should be focused on the development of human capabilities. Injustice is done when transnational arrangements are made that do not take serious consideration of the specific characteristics of societies. In other words, when the "right measure" between what others need and how much they can provide for themselves and be provided for, is ignored by the institutions in society. The capabilities approach will also be left out of further discussion.

Here I conclude the discussion of Aristotelian theories of justice and move to the Rawlsian. Thus, if we take the Rawlsian concept of justice as a starting point while interpreting 'global' as an incentive for turning our political thinking away from the methodological nationalism and towards methodological individualism, then we come to advocate cosmopolitanism, voiced primarily by two of Rawls' students, Thomas Pogge and Charles Beitz.<sup>17</sup> The key element of cosmopolitanism is a so-called "normative individualism". Rawls uses this notion in his theory of justice, when he considers all individuals "free" and "equal" and as adequate "sources of valid claims". This means that it is these free and equal individuals, with their reflective powers and their different conceptions of good that decide upon the design of institutions under which they will live. As we already stated, just are those institutions that mitigate the consequences of contingent characteristics of individuals. Up to this point, cosmopolitans would agree with Rawls. The disagreement begins when they, Pogge, Beitz and other cosmopolitans, take this notion of mitigating contingencies to a global level.<sup>18</sup> These philosophers are led by Pogge's famous definition of cosmopolitanism:

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<sup>17</sup>It is their version of cosmopolitanism that I will be further referring to as cosmopolitanism and will be discussing as paradigmatic of such. In recent years there has been a rise in number of philosophical writings that title themselves cosmopolitan and I find it necessary to stress that I focus my work on the version of cosmopolitan argument developed by Thomas Pogge and Charles Beitz.

<sup>18</sup>The above mentioned cosmopolitan philosophers extended Rawls' argument to a global level even before Rawls presented his own theory of global justice (Pogge 1994; Beitz 1979).

“Three elements are shared by all cosmopolitan positions. First, individualism: the ultimate units of concern are human beings or persons- rather than, say, family lines, tribes, ethnic, cultural, or religious communities, nations, or states. The latter may be units of concern only indirectly, in virtue of their individual members or citizens. Second, universality: the status of ultimate unit of concern attaches to every living human being equally- not merely to some subset, such as men, aristocrats, Aryans, whites, or Muslims. Third, generality: special status has global force. Persons are ultimate units of concern for everyone-not only for their compatriots, fellow religionists, or such like” (Pogge 1992: 48).

What this means in practical terms is that on a global level the ultimate unit of concerns remains a human being, but the scope of contingencies that should be mitigated widens: the place of birth i.e. country, culture, and tradition fall under the underserved inequalities which global order should respond to. Both philosophers were disappointed that Rawls did not apply his “difference principle”, a principle that mitigates undeserved inequalities on a domestic level, globally. Both, Pogge and Beitz, have developed their version of the global “difference principle”. Beitz introduces his “resource redistribution principle” (RRP), while Pogge presents his concept of “global resource dividend” (GRD). Beitz thinks that natural resources can be viewed in an analogy with human talents, and that some areas just happen to have ample resources while others do not. RRP should give each society a fair chance to establish just political institutions and an economy that can fulfil its members’ basic needs. However, this simple transfer can only happen if we take that societies are autarkic and solely dependable on their own resources. In the world that is already cooperating a great deal, some *ex ante* redistribution of resources is not possible; therefore, Beitz reformulates his principle into a simple global distribution principle, i.e. global difference principle. This will function in the same manner as the national difference principle does: a global original position will identify the group of the least advantaged and any profit made by those more advantaged is to be for the benefit of the group of least advantaged, wherever in the world they may be. It is of no importance that the the least advantaged group may not be in the same country, although it may happen that it would. It also does not mean that states need to stop functioning as institutions that provide many benefits for its members. By organizing the difference principle globally and by having supra-national institutions to deal with the “global poor”, the job for good intra-state governance will also be simplified (Beitz 1979: 150-153).

Pogge criticizes Beitz for his insisting on redistribution, saying that “re” presupposes some prior set measurement or entitlement which is in liberal societies not the case; it is not the possession of natural resources that is the problem but the usage of it. If society makes use of it then the advantages gained should be directed to benefit those least advantaged, no matter what society they live in. He proposes the GRD, a kind of tax on the usage of resources that would then be distributed to those less advantaged. There may be a central collecting agency to distribute the GRD, along with many smaller agencies, making sure that everything works well on the local level (with regard to both tax collection

and distribution). The political apparatus of states is also an option for the correct implementation of this dividend. However, the ultimate matter of concern is for the least advantaged, regardless where in the world they might be. (Pogge 1989: 211-281). Since cosmopolitans make the strongest counterargument to Rawls' theory while respecting the basic Rawlsian framework, and since in the last decade they have become probably the most influential philosophical line of thinking, I will continue my discussion with these theories throughout this work.

The group of so-called liberal-nationalist thinkers takes the Rawlsian paradigm as their basis but commit them in advocating the necessity of a strong state as basic units in the process of globalization. These philosophers stress the importance of cultural differences and hence affirm global institutions only in concordance with the principle of subsidiary. This again means that though we may have some duties towards everyone in the world, we definitely have special duties towards fellow nationals. The argument they use to justify their point of view is two-fold. In the first place, they call for intuition: it is counterintuitive to feel equally obliged to all the people around the world (Miller 2000: 25-6). Secondly, their argument is based on the idea of reciprocity: as members of same political regime. Both arguments are open for critique: if we were institutively to be more obliged to a certain community, this community would need to be a value community of some kind and not necessarily a nation or it is to be a nation than it needs to be a morally satisfactory form of human association (Caney 2000: 134). An objection to follow from this argument is whether one owes a duty to co-nationals in an exploitative regime. Furthermore, it is also questionable whether we are obliged to those that are disabled and do not cooperate due to their disability. However, if liberal nationalism is to be confined to cultural exclusiveness, in the sense that one has obligations to her co-nationals for the preservation and protection of their culture, which does not force it on anybody else, then liberal-nationalists generate the healthiest version of patriotism (LP: 25). Many critiques have expressed the view that Rawls had changed his position from *A Theory of Justice* (TJ) to *The Law of Peoples* (LP) and moved in a more liberal-nationalist direction. If that is the case, it will be seen in the present work.

Finally, there is Rawls' own version of global justice. His version clearly presents the "middle-way" of thinking about globalization. The basic element of his theory of global justice is "the peoples", a concept that was vehemently disputed in philosophical literature. The peoples (cf. § 3.) are on one hand ideal liberal societies, as we know them from TJ or PL, and on the other hand ideal decent societies, societies that are not liberal. In both cases it is the population of these societies that has an ultimate vote about the design of their institutions and complies with them freely and willingly. Hence, if we view the relations of individuals to their peoples' in analogue to that of peoples and the society of peoples, we realize that Rawls advocates a special kind of moral cosmopolitanism while at the same time

envisioning institutions that respect cultural differences. Rawls' version will be discussed in the next chapter; it is the most complex version of all the above mentioned.

For the majority of this work I will leave out the philosophies that I labelled as being Aristotelian at their core. The reason for doing this is simply that I do not want to disperse my strategic focus. I am deeply convinced that, at least as far as the political discourse is concerned, justice is and should be a matter of principle, and in such a way a matter of institutions. This paradigm does not change once one looks beyond the borders of the nation-state. Furthermore, it does need to diminish the role of the nation-state, while at the same time respecting the well-being of the individual. Therefore, I believe that it is possible in *hypothesis* to form consents about a framework of global justice, developed *sub specie mundus*, but meant *sub specie aeternitatis*, if we think in terms of principles and not in terms of pre-given values. This idea, which is at its core Rawls', will be followed in the rest of this work. I hope to be able to justify it to the reader.

## 1.2. METHODOLOGICAL ANALYSIS

The previous chapter explicated six views on global justice that draw on two different paradigms of justice. The goal was to mark the terrain of my investigation and to make the reader better able to address the more specific and more complicated questions to come. Now my focus needs to be specified more clearly. The line of thinking, or the paradigm, that I am adopting is clearly Rawlsian. I am also ready to advocate Rawlsian views on global justice, so my standpoint needs further justification. I will first defend Rawls' theory by comparing it to the philosophies that also adopt a Rawlsian paradigm for the domestic case, but will come to defend different views in a global context. This section deals with differences in methodology of these fundamentally kindred theories. By stressing their point of disagreement, I hope to show where those that diverge from Rawls' thinking make mistakes. I will first and foremost discuss the dispute between Rawls and the so-called cosmopolitans, since the cosmopolitan philosophers systematically offer the most substantial objection to Rawls. The structure of the argument will be as follows: I will first explain what methodology Rawls uses in order to obtain principles of justice for a domestic society. Then I will explain how the same methodology is used for obtaining the principles of global justice. Finally, I will explain the methodology used by cosmopolitans. In comparing the two it should become clear why Rawls' version is more appropriate for designing global principles of justice.

### 1.2.1. POLITICAL CONSTRUCTIVISM IN A GLOBAL CONTEXT

“...I consider how the content of the Law of Peoples might be developed out of the liberal idea of justice similar to, but more general than, the idea I called *justice as fairness* in *A Theory of Justice* (1971). This idea of justice is based on the familiar idea of the social contract, and the procedure followed before the principles of right and justice are selected and agreed upon in some ways the same in both domestic and the international case.”

John Rawls, *The Law of Peoples* (1999), p.3-4

According to Rawls a theory of international justice is methodologically, structurally and content-wise the natural continuation of a theory of justice for a domestic society (TJ: §58; LP: 3-4). Thus, it is only logical to start with Rawls’ methodology for a domestic society and then explain his extension to the world at large.

The method Rawls uses to arrive to his conception of justice is one of *constructivism* supported by the test of *public reason* and the reviewing process of so-called *reflective equilibrium*. Constructivism simply means that the result we are searching for consists of different parts that we are putting together. Constructivism is a method of justification in ethics which stands between realist and relativist accounts, as a third, distinct possibility (O’Neill 1988: 1). Virtue ethics, like that of Aristotle for example, make use of realists and relativists accounts. These then play a role in agent-oriented, as opposed to the institution-oriented, political theories. Constructivism as a third-way makes use of both realism and relativism while being allegedly anti-realist and anti-relativist. It starts from what we take to be a true or as Rawls puts it, well-considered judgement (CP: 5-7; TJ: 16-17).<sup>19</sup> Quasi- true or well-considered judgments decide upon the basic units of construction, as well as on procedure of construction. The quality of being well-considered gives them quasi-realistic and anti-relativistic status. However, in the myth of well-considered argumentation they are changeable. A theory is being built by taking judgments to a higher level of generalization, i.e. making them into principles, through the procedure which is widely recognized as a fair one. The resulting principles are again reviewed with a help of the principles each one of us takes to be true. Those that are verified still need to be publicly announced and easily accessible to everyone and so eligible to critique, review and application. This abstract explanation of constructivism will be clearer shortly as I tacitly explain concrete steps of Rawls’ procedure. I do this by answering the following five questions:

1. What is being constructed?
2. What is the device of construction?

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<sup>19</sup>Rawls defines well-considered judgments as those moral judgments in which we have the greatest confidence; they have been thoroughly revised, uncontroversial, stable, etc. Rawls lists seven conditions for considered judgments in his essay “Outline of a decision procedure in Ethics” (cf. CP: 1-20)

3. What are the elements of construction?

4. Who is constructing?

5. Who is assessing the results and on what basis?

### *Constructivism in A Theory of Justice and Political Liberalism*

The object of construction is the content of a doctrine, i.e. principles of justice. Rawls is trying to answer questions about which principles shall govern the relations between the people in society so that that society can be considered just. Just is the society in which everyone's reasonable expectations are fulfilled.

The device he uses for the construction of these principles is that of an original position. The original position is the modification of the social-contract idea, as found in Kant, Rousseau and Locke but taken on "the higher level of abstraction" (TJ: 11). Unlike Locke's contract, original position is not historical and is hypothetical. Unlike Kant's the outcome of the contract is not deduced from practical reason as such, i.e. it is not *a priori*. And unlike Rousseau's contract, the original position is not supposed to express the deliberation on the common good or "general will" but rather the deliberation of each individual about each individual's good that can as such be combined with the good of others.

In the social-contract tradition, the idea of a state of nature is an expression of ideas of equality and freedom of the parties. The parties are to make an agreement on how they are to be governed while leaning solely on their natural endowments. Rawls wants his principles to be impartial; therefore, the parties in his original position lean solely on their reasoning powers and their general knowledge. Instead of the 'state of nature', Rawls uses the idea of "the veil of ignorance", under which the parties do not have any specific knowledge, neither about themselves nor about their societies, but do know the general facts about human psychology, economy, geography, etc. This veil empowers parties for unambiguous reasoning. The original position is then the hypothetical, non-historical contract situation in which parties, stripped from any particular, personal knowledge, but aware of the general facts of science and human conditions, are deciding about the principles that are to govern the political constitution of the society in which they will live.

In order to answer questions three to five I need to introduce Rawls' distinction between the three points of view: "It is important to distinguish three points of view: that of the parties in the original position, that of citizens in a well-ordered society, and finally that of ourselves- of you and me who are elaborating justice as fairness and examining it as a political conception of justice" (PL: 28).

Rawls needs three subjects in order for his theory to be theoretically demanding while at the same time not utopian, i.e. founded in reality. The idea common to all three subjects is that of a free and equal person. Different aspects of freedom and equality are stressed differently in three subjects. Intelligible or theoretical, i.e. descriptive aspects of freedom and equality are found in the parties of the original

position; practical, or normative, aspects are found by the citizens of well-ordered society. We, the real people, are anchored in reality and are putting the two aspects, the theoretical and the practical one, in concordance. This needs further explanation.

The parties in the original position are artificial individuals, *noumenal* selves, those that are not burdened by undeserved inequalities and can reason only from general knowledge. They are aware that they are representatives of real persons and that they ought to promote a personal good of the person they represent; however, they are unaware what that good exactly is. In describing the parties in the original position, Rawls extracts from characteristics of an actual person. Any specifics of personal character or social status may impede on impartial reasoning. Parties use their capacity for a sense of justice in its pure form. A sense of justice is the moral capacity that is said to be developed if the individual can make moral decisions only on account of principles and not under pressure from its community or specific authority. Since the parties in the original position do not know their conceptions of good, they cannot know to what authority they are to be subjected. By extracting from particular knowledge the only thing that remains is the capacity itself.<sup>20</sup> Parties are thus free, i.e. not burdened by their social constraints or own personal characters in considering different principles of justice. They are equal in the sense that their decision is based solely on their powers of reasoning. Freedom and equality are therefore rational freedom and equality.

However, the parties are aware that there are others. They do not take the concrete interest of others into account but are aware that these exist and that their interests need to be coordinated with one's own. This leads the parties to choose the principles that express reciprocity. Reciprocity is one of the main formal conditions of justice as fairness. The reasoning of the parties is mutually disinterested, but not selfish, rational but also reasonable, they are aware of the necessity of cooperation, on account of general knowledge about \ human nature. They are not burdened by any specific knowledge and in that sense they are equal. They are equipped with the powers of reason and a sense of justice and in that sense free to impartially choose the principles of justice. Rawls says that the parties have rational autonomy, which means that they choose the principles they will adhere to if they are to have any social place in that society. These parties, however, do not live under the principles of justice; they do not practice the principles of justice.

The second point of view is that of citizens in a well-ordered society. They are also artificial, but their existence might conceivably be realized. They live and practice the principles of justice. Inequalities that exist among citizens in a well-ordered society are those that are left out under the veil of ignorance.

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<sup>20</sup>For people who live in the real world, the capacity for a sense of justice may be blurred by the contingencies of life and the unfavourable conditions we all live in. It comes to its full expression again in the well-ordered society where the principles of justice are practiced.



After the veil has been lifted and principles of justice put in place, Rawls describes an ideal state of domestic affairs: rational and reasonable citizens who fully comply with the principles of justice and the favourable internal and external conditions for the practice of the same. By favourable internal and external conditions, Rawls means that principles of justice are public and that everyone can know and question them. On the other hand, Rawls is idealizing the fact that there are psychological or physical disturbances that would impede citizens from practicing the principles of justice.

Citizens of a well-ordered society act towards one another out of the principles of justice. The political system that corresponds to reasoning from principles is liberal. Hence, citizens live under the liberal constitution, which allows them to act rationally and reasonably. The citizens are practicing what Rawls calls full autonomy. Full autonomy means active practice of freedom and equality.

Finally, we come to the third point of view, us, you and I, the readers of Rawls' work, who are very much burdened by our everyday realities: inequalities, non-compliance, or the unfavourable conditions that disturb the wish for compliance. We, you and I, with all of our imperfections, have learned to trust some of our judgments more than others. With assurance we can claim that some of these judgments about our social reality are well-considered, even true. A theory of social, and consequently global, justice will have to account for these judgments.

Having said that, I now turn to answering questions three, four and five. The elements of construction are: moral persons as free and equal (their formal, or rather general, aspect has been expressed in the original position, while their individualized character in the well-ordered society); well-considered judgments (judgments we make after considerable reflection then take to be true); an idea of an original position (as a device of construction); and an idea of a well-ordered society (as something that needs to be constructed).

The fourth question asks about the creator of the construction. It is we, you and I, and we are trying to reach an agreement on the fair procedure that would be a framework for the deliberation on the fair principles of justice. Unlike Kant's moral principles, principles of justice are not *a priori* derived from the practical reason but are a part of our best considered judgments, and as such are debatable. We, as creators, are able to change and revise our judgments, our construction procedure and respectively its results. How do we proceed? We start with the idea of a moral person. It is the moral person, or rather persons, that are to agree on the principles of justice that they are to impose on themselves. Considered judgments are the judgments we are most certain of, and can serve as fixed points, e.g. "wealth should not play a role in just social institutions". The procedure of construction is to make vivid to ourselves the restrictions that seem reasonable to be imposed on arguments for principles of justice, and therefore on the principles themselves. It seems reasonable and generally acceptable that no one should be advantaged or disadvantaged by natural fortune or social circumstances in the choice of

principles. It also seems reasonable that it should not be allowed to tailor principles so that they best suit one's own case (TJ: 18). So we begin by describing the procedure of construction in its generally shared and preferably weakest condition, i.e. that of an original position. These conditions should then yield a significant set of principles, i.e. principles of justice. If they do not, we introduce other considered, generally shared judgments. The whole endeavour is undertaken by Rawls and by us, the readers or Rawls' work, i.e. the citizens of a modern world. By the same token in which we construct the principles of justice we are assessing the results of the process. Ideally, the result of this process would affirm our considered judgments about justice, e.g. judgments like "slavery is unjust". If it does not, we either change the elements of the construction or change our judgments. We continue changing one of the two until the equilibrium has been reached. This process is known as *reflective equilibrium*. Therefore, principles of justice are in reflective equilibrium between what is theoretically desirable and practically possible, since our considered judgments are anchored in political and moral practice. Thus the principles gained in such a manner describe how we think about justice, here and now.

Finally, Rawls' thinks that a judgment gained through constructivist procedure is correct because it issues from what we think on reflection to be correct procedure of practical reason correctly followed and using true premises. The principal idea is to establish a connection between a particular starting unit (that of conception of the person as free and equal supported only by the capacity for a sense of justice and the conception of the good), and the first principles of justice by means of a procedure of construction, i.e. reflection. Taking free and equal persons for the first premise and reflection as a process of assessment, Rawls stays, in his conception of justice for a domestic society, deeply rooted in the liberal tradition. This he explicitly admits in his later work (cf. CP: 388-415). He points out that his theory of social justice is to be applied to modern liberal democratic societies and not to societies any place and at any time. On one hand this makes the theory more consistent with praxis and less demanding, but on the other makes its application on the global level more complex. Global constructivism shows methodological discrepancies in the domestic case.

#### *Constructivism in The Law of Peoples*

In LP, Rawls starts where the domestic theory ends: the construction of a justice for a well-ordered society. Rawls indicates that the answer to the problem of global justice lies in correctly relating just principles regulating "the conduct of states to the contract doctrine and to explain the moral basis of the law of nations from this point of view" (TJ: 337). Here again we ask the above mentioned five questions: What is being constructed? What is the device of construction? What are the elements of construction? Who is constructing? Who is assessing the results?

The content of a doctrine are the principles of global justice. The device used is again that of an original position. The starting point for a construction is, where TJ has left us, the world of well-ordered

societies. Now the elements of construction are representatives of societies; well-considered judgments about the behaviour of societies; and the idea of a well-ordered Society of Peoples (as an institutional representation of the principles of global justice).

In the second original position, under the veil of ignorance, are representatives of societies. These representatives do not know the size of the territory, the demographic characteristics of the population or the relative economic strength of their society (LP: 32). Here the veil of ignorance brackets not personal, but social or communal-characteristics. However, the representatives have general knowledge about world geography, economic or mathematical laws, environmental laws, importance of religion etc., and they know that the societies they represent have a conception of justice worth protecting. This means that the representatives know that the people who live in these societies are satisfied and that this should not be endangered.

Representatives are considered to be free and equal. However, freedom and equality here are to be taken only as analogous to the freedom and equality from the first original position. Here freedom and equality refer not to typically liberal characteristics but to a standard notion of international law: sovereign states are to be taken as free and equal partners. However, and this will be further explained in the next chapter, Rawls places constraints on the notion of sovereignty. According to Rawls, not just any nation-state should be considered sovereign and consequently free and equal. Truly sovereign are those societies that secure basic human rights for their citizens and do not start wars for any reason other than self-defence. Their institutional arrangement may, but need not necessarily be liberal. Rawls acknowledges that there may be societies that are sovereign in his sense of the word, but affirm a conception of justice different from that suggested by his TJ. These still may be respectable partners in foreign relations. Rawls acknowledges and gives due respect to cultural pluralism. The equality of societies is thus only formal; they are equal in their powers of sovereignty and in deciding upon the principles that are to govern their conduct towards each other, but are substantially, i.e. economically, socially or politically, unequal.

Since there are two types of societies that are eligible to be just partners in foreign relations, there also must be two different second original positions. The reason is that Rawls wants to start with as much equality as possible. The fact that the parties come from societies that are institutionally organized differently may unnecessarily burden the decision making. The idea behind the construction procedure is here the same as in TJ: to make vivid to ourselves the restrictions that seem reasonable to be imposed on arguments for principles of justice, and therefore on the principles themselves. The goal of LP is not to create principles for a world state, i.e. one overarching institution which combines all cultural differences into one political system. The goal is a peaceful and stable world of different satisfied societies, and consequently the principles that would arrange their independence and co-

operation. Having this goal in mind, it is obvious that having a distinct culture, i.e. justice preferences, needs to play a role in deciding upon the principles of justice and hence is not a restriction that is wise to make.<sup>21</sup> However, intuitively we feel that the nationality and culture we were born into is a contingency of life, and as such should not play a part in thinking about justice. The only way for the diversity of cultures not to play a role in political decisions is for everyone to share the same kind. Thus, Rawls set up two original positions: one for representatives of liberal states and one for representatives of non-liberal ones. The hope is that they will affirm the same principles and the decisions will not be burdened by the cultural differences, although these would be given due respect.<sup>22</sup>

The immediate consequence of such a constructivist procedure is that it *a priori* forbears the possibility of distributive provisions between the individuals globally. Many philosophers criticized this. However, the principles chosen are said to correspond to our<sup>23</sup> considered judgments about international relations. If they do not, we start a “to and fro” procedure, between theory, i.e. the principles chosen in the original position and praxis, i.e. reality of international relations. When we finally reach equilibrium it will express, i.e. describe, our thinking of global justice.

Rawls thinks that the principles chosen are well known from the history and tradition of international law as those that have survived the times and have proven to be useful. Here I think he makes a mistake. If the principles chosen in the original position are simply the principles of international law, then philosophy is useless. This will be explained later in this work (§ 4.).

When constructing the principles of global justice, Rawls starts with the fact that the world consists of different sovereign states. He uses the device of the original position to abstract from the contingencies of these different societies. We, those who are reading Rawls’ work, finally check the principles through the reflective equilibrium. Rawls’ ideal version of international relations is probing the limits of the morally permissible for different societies; however, it stays within the domain of practically possible since it starts with realistic precepts and finishes with affirmation from the real people. In such a manner it is the true expression of constructivism: halfway between utopia and realism.

To conclude, through the method of constructivism Rawls arrives at the principles of global justice. These have as their goal on one hand to make sure that the internal justice of each state is preserved and on the other, that the relations between states are peaceful and prosperous. Any possible utopian conclusions of Rawlsian constructivism are constrained by the test of reflective equilibrium and public reason. These tools (reflective equilibrium and public reason) relate his theory to real world politics. In

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<sup>21</sup>The differences in culture and nationality, and consequently the differences in the conceptions of justice, are after all the reasons for not advocating the world state, since it would have to be despotic.

<sup>22</sup>If there were only one original position, it might so happen that many provisions concerning protection of the negative freedom of the parties would be introduced as a matter of protection for one’s own society and culture, whatever it may be.

<sup>23</sup>We are either the representatives of liberal or non-liberal societies.

his global justice view, Rawls takes into account the plurality of states and different cultures, and therefore tries to play down his liberal aspirations.

### 1.2.2. COSMOPOLITAN CONSTRUCTIVISM

“A global institutional scheme is imposed by all of us on each of us. It is imposed on us in that we cannot simply drop out and renounce participation.”

Pogge, *Realizing Rawls*, p.276

Rawls' global constructivism will here be contrasted to cosmopolitan constructivism. Cosmopolitanism is a complex notion in and of itself; the different versions of it complicate matters further. As already indicated, I will focus only on the cosmopolitan account developed by Thomas Pogge and Charles Beitz. Both approve of Rawls' methodology and the results that flow from it in a domestic context, but both protest against the global version of it. Both Pogge and Beitz advocate a global justice view that is not constructed in two stages but in one: the parties, who are representatives of individual citizens, decide on the global original position, behind the global veil of ignorance that comprises the two different veils presented by Rawls, on the global principles of justice. According to these philosophers, if the veil of ignorance is supposed to exclude us from knowledge about morally arbitrary facts, then the country we are born into is certainly one of them. All people in the world should be treated equally and there should be a consensus on globally guaranteed human rights as well as global distributive principles. These guarantees and distributions may be done by local offices but they are merely delegating the decisions made globally; therefore, their position is that institutions are just or unjust if they take into account and consider rights and liberties and distributional shares of all the people around the world equally.

Pogge and Beitz start with Rawls' constructivist's device of original position, but do not use other elements of Rawls' constructivism. This makes their version more dogmatic with less heuristic potential. I will explain this below.

Beitz in his influential monograph, *Political Theory and International Relations* (1979), presents two arguments about why Rawls' original position should be undertaken in one move and why the parties in such an original position would choose to apply Rawls' distribution principle, so-called the difference principle, globally. The first argument says that the undeserved inequalities between individuals, those of different talents, social positions and wealth, are analogous to the undeserved inequalities between states, which comes down to the possession of natural resources and the ability to exploit them. The second argument says that if justice is a virtue of social institutions then there must be some kind of institution in order for justice to be done. Beitz argues that the system of international economic interdependence constitutes a scheme of social cooperation analogous to that of domestic social

institutions.

If we combine the two arguments we see, according to Beitz, the necessity for principles that apply directly to individuals globally. The consequence of this argument is that the well-being of all individuals in the world is compared according the same criteria. The principles of justice will provide provisions for the cases when the well-being of individuals is disturbed. Societies are seen as having an instrumental role as the executors of justice. The details of justice are decided on the global level in the global original position where the parties are individuals, but do not know their personal characteristics or the characteristics of the states they live in. Beitz does not make use of the reflective equilibrium test in his conception nor does he mention the test of public reason. The first is an important connection to real-world politics, while the latter to both the theoretical as well as practical approaches to pluralism. This needs further explanation.

First, taking the individual, as the unit in the original position requires a global distributive principle, which would require some serious transfers from rich countries to poor ones. Even more so, the countries per se would not be important and would not have any legislative but only executive power; legislation would be a global demos. Transfers would be indefinite. This picture is far from being anything like a "considered judgment" by you or I, or by contemporary world leaders. It might be taken under consideration *in hypothesis* but *in thesi* it is too ambitious and therefore useless as a specific guideline. Secondly, parties in a global original position are *noumenal* selves, which as such perceive themselves as free and equal. After the veil has been lifted they might find themselves in societies where freedom and equality of individuals is not cherished in the same way as in liberal societies. The liberal ideal which they now need to abide by and which would be proclaimed publicly would be taken as imperialistic and certainly would not lead to a peaceful and stable world. Thus Beitz's constructivism does not pass the test of reflective equilibrium or of public reason. Beitz defends his position by arguing that we do not begin with an actually existing structure and asks whether it is reasonable for individuals to cooperate in it. Rather, we begin with the idea that some type of structure is both required and inevitable, given the facts about the extent and character of the division of labor, and work towards the principles the structure should satisfy if it is to be acceptable to individuals conceived as free and equal moral persons (Beitz 1979). The Rawlsian answer to this could be that the actually existing people need to find the proposed principles that correspond to their sense of justice. On a global plane, many different cultures need to approve the same global principles of justice as the expression of their own views. With Beitz's conception this is impossible.

Thomas Pogge presented his view on how to extend Rawls' principles of justice on a global level even before Rawls himself had a substantial theory about it. In his well-known monograph *Realizing Rawls* (1989), Pogge suggests the global original position as a method for arriving at the principles of justice

for the world at large. He therefore criticizes Beitz for trying to draw a parallel between natural endowments and natural resources. Having property rights or eminent domain over a natural asset is very much a social fact which depends on the benefits and burdens of social cooperation (Pogge 1989: 252). It is the main responsibility of everyone to make this cooperation just. This is done best if we start from the global perspective which then constrains the national one. It is the global perspective that decides how much room one should leave for differences in national institutional arrangements and national conceptions of justice.

Pogge's suggestion gains a clear institutional image in his later writings. He suggests namely that GRD should be introduced. GRD is an elaborate version of global distributive method. The idea is rather simple: those countries that use or sell their natural resources have pay to tax on them, the money goes into a big pool and then through some sort of agency, similar to the various United Nations agencies, is distributed to those who need it the most. GRD is a charge on consumption. GRD would require no central bureaucracy, nothing like world government. GRD would be, conversely from traditional development aid, a matter of entitlement and would not call for a special relationship between the "donor" and the "recipient". Acceptance of GRD payments would be voluntarily, i.e. a society may refuse greater affluence if it chooses (Pogge 1992).

The idea for GRD would, according to Pogge, be accepted even in Rawlsian second original position let alone the global original position. Pogge's proposal is more elaborate than Beitz's<sup>24</sup> and though less subjectable to the realism- objection i.e. to the problem of implementation of the cosmopolitan ideal, its methodology is still subject to "the liberal- imperialism" objection. The theoretical guidelines for the world at large are to be constructed according to the liberal blue-print model, i.e. starting from the individuals as free and equal, and allowing the divergence from the liberal ideal only in so far the basic

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<sup>24</sup>Tim Hayward explains in his article "Thomas Pogge's Global Resource Dividend: a critique and an alternative" (2005) how GRD is a highly disputable concept. Hayward quotes Joseph Heath, for instance, who has argued that the distributive effects though GRD would be random because even if the dividend goes to the poor, it is levied on the extraction of primary resources whose territorial distribution includes both some rich and some poor nations. More crucially, in taxing the immediate products of primary extraction, it falls most heavily on those nations dependent on such activities rather than upon those with more capital-intensive production techniques. This means that in practice it could tend to fall on poorer, rather than richer, nations. Recognizing this, Pogge's response is that the cost would be passed on to richer nations in the form of higher commodity prices. Heath objects that it would be passed right back to poorer nations in the form of higher prices for manufactured goods, which is what those commodities are exchanged for. Pogge does recognize that applying the GRD to certain kinds of resources would quite foreseeably harm the poor directly. He accordingly says that the GRD should apply not to the cultivation of basic commodities such as grain, beans or cotton, for instance, but rather, when it is land use at issue, raising cattle or growing crops such as tobacco, coffee, cocoa or flowers. Tim Hayward suggests that such ad hoc qualifications could be seen as compounding rather than alleviating poverty (Hayward 2005: 4). Unfortunately, it is not the focus of my work and I do not have here enough the poor space to greatly elaborate on it. But it suffices to point to the fact that there are many philosophers who think that it would damage the arbitrariness of the proposal. If poor people are under economic pressure to switch from producing food crops to cash crops this would not be relieved simply by squeezing profit margins on the latter as well. The arbitrariness may also extend to the quantification of the proposed tax: about the rate at which it should be set; about identifying the relevant sum of economic value of any given resource that the tax would be applied to. Further, there are questions about the point at which the process should the tax be applied. What kinds of costs are associated with the processes?

standards of living are met for everyone. The question is of course who decides what “basic” is and how much is considered “basic”.

To conclude, there are two major objections to the cosmopolitan view presented here. First, cosmopolitans take the liberal conception of justice in its Rawlsian version, with free and equal moral persons at its base for a global standard. In doing so, they deny the plurality of conceptions of justice and though being constructivist are also dogmatic. Second, the approach does not prescribe any normative value to states as institutions, i.e. it does not take different constitutions as the expressions of different conceptions of justice worthy of being preserved as such. It gives them a purely instrumental role. States as regional institutions are there only to put into practice the principles arrived at the global level through global original position. However, these smaller units do not generate any special rights or duties. Even more so it turns the question of distributive justice into a question of universally recognizable moral virtue and hence the approach distances itself from the real-world politics.<sup>25</sup>

However, cosmopolitans claim that they focus on real world problems, problems that individuals around the world have e.g. poverty and starvation. The approach advocates a so-called “normative individualism”, the idea that the moral value of an individual is a model for politics and law. Each person’s human rights should be respected and each well-being taken care of equally. The conception amounts to prescribing to individuals around the world negative duties of not harming others, as well as the positive duties of actively helping people around the world. Human rights respect and the respect for negative duties are notions that would not be denied by other liberal or communitarian philosophers. Positive assistance however, is very much culturally conditioned and unless it falls under a domain of human rights protection, cultural plurality should be respected. Cosmopolitans do not recognize this; they set a liberal ideal and think it applicable in its ideal form to the world as it is.

While Rawls’ constructivism starts from the equality of different cultures and freedom of practicing it, cosmopolitans start from free and equal individuals and impose liberal criteria to the world at large. It denies normative value to groups of any kind. The method does not use the test of reflective equilibrium but rather appeals only to the reasonable thinking of those raised in liberal countries. In advocating global original position, respectively global constructivism, cosmopolitans create an ideal theory of global justice that requires too much from real world politics, e.g. dissolution of states, or redistribution of goods in extensive amounts.

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<sup>25</sup> There may exist societies that do not care for material goods or care to participate in global distribution, or even to receive a portion of it, as it would be offensive to them, e.g. Tibet.



### 1.3. FUNCTIONAL ANALYSIS

This portion analyzes what purposes different theories of global order have as their final goals. I will argue that Rawls and the so-called cosmopolitans have different notions in mind as the final outcome when they talk about “global justice”.

Rawls gives us a universal formula about the general role political philosophy may play as a part of society’s public political culture. The first is its practical role, to point to some deeply disputed issues and to see whether there can be a philosophical and moral basis for an agreement. The second role is to orientate. It makes one think and rethink his/her position and role in the society, association or group, and of the social institutions that coordinate these associations and groups. The third role is that of reconciliation. It should explain how the ideas for the institutional arrangements evolved. In this way it does not justify the status quo but points to the development process and empowers one to change what is not seen as adequate. The forth role is the utopian; it is “probing the limits of practicable political possibility”, and it makes *us* ask what would a just society (or world) under favourable but still possible conditions look like (LHPP: 10-11; JF: 2-4). This is how Rawls organizes his work. As a final goal for his theory, or rather as its leading idea, Rawls places Kant’s idea of *foedus pacificum*.

Kant develops the idea in his pamphlet Perpetual Peace (1795). In Kant’s view, peace in the world is a precondition for any prosperity, which can only be achieved when the well-ordered republican states voluntarily join the Union of States, which represents a relaxed federation with no real supranational powers but excessive trade among its members. This union would make people cooperate closely and treat each other in a cosmopolitan manner of good friendship, no matter where within the union they may live. Kant also does not advocate a world state, although he admits that this would be *in hypothesi* the best bet. *In thesi*, that is in practice, he foresaw that one day all states in the world should have the republican (liberal) order. Kant’s political theory depends a great deal on his moral theory. This means that moral laws are to be derived from the practical reason and as such are the same for people around the world and make a good basis for only one political system, the republican one, to be equally desirable around the world.

Political reality after Kant has proven him wrong with respect to the unity of practical reason. There is a plurality of cultures and to favour one political system would be as despotic as insisting on the world state. Rawls sees pluralism of the conceptions of justice as the biggest theoretical problem for the cosmopolitan approach. Rawls’ morality is one of constant thinking and rethinking of its basis and its outcomes. He does not derive his morality from a practical reason but uses practical reason to account

for the pluralism in the world. He argues from a liberal perspective, which is very much Kantian but tries to account for other perspectives that are not liberal. He furthermore points to how many of the liberal demands we should rethink in order to reconcile with the rest of the political world. But he also asks us not to stop orientating or educating, thinking and rethinking how the world can become an even better place. His vision is constrained by reality but is out of the perspective of a liberal; however, it also probes the limits of liberal tolerance.

Hence Rawls wants for his theory to account for the peaceful world beyond the liberal conception of justice. *Foedus pacificum* should account for the plurality of reasons. He does not explicitly use the term “justice” when talking about the all-embracing world order beyond the nation-state. However, in the twenty-first century, peace does not mean just a peaceful coexistence of kindred states but much more. It means developing principles of cooperation and mutual assistance of not necessarily kindred state orders. It means respecting different conceptions of justice and the roles individuals play in them. The final goal is a society of *satisfied* peoples, even if the method to obtain this goal is war or intervention. War and intervention can be deployed only for the sake of protection of human rights when political actions hinder the idea of peaceful union of states coming about. Consequently, the idea of peace is complex. It contains the idea of social justice as well as the idea of cooperation for the sake of prosperity of all cooperating sides and the idea of assistance or help, which is due among the parties.

Rawls has often been charged with imperialism (Audard 2006) because he seems to propagate liberal values as the norm for international relations. He talks extensively and persuasively about the democratic peace thesis, which states that liberal states do not go to war against each other. However, with the loaded, multi-layered idea of peace as his goal, Rawls’ theory necessarily goes beyond the democratic peace thesis in the sense that it takes it as matter of fact but not as a normative claim for the world as such. Normative is the idea of satisfied, or successful, peoples (LP: 45; 47). Successful are those that achieve political and social justice within their borders. This means that they secure basic freedoms for the population; members of a society can freely express their society’s culture, while society secures a decent economic well-being for its members. Society of peoples should work on preserving the well-being of its members. The way to achieve this is through cooperation, assistance and overall respect for human rights. If societies can act according to these principles then peace will be long-lasting and satisfaction in the world secured. In this event, the protection of domestic justice would mean securing the global one.

Hence for Rawls, “global justice” means a peaceful world order of satisfied states, i.e. states that can agree on the number of principles that regulate their conduct and develop trust and confidence in each other. Rawls is trying to establish a theoretical ground for thinking on the level of principles among

different cultures, i.e. different states. However, these states are not just any states but states of satisfied peoples. To be satisfied can mean many things, and Rawls allows for a plurality of meanings as long as the condition of reasonableness is respected, that is the society respects basic human rights of its members and treats other societies with the due respect. Rawls creates an ideal theory that summarizes his thinking about justice in different societies, i.e. cultures. Only such an ideal theory may be a guideline for developing real-world politics.

Cosmopolitan authors accuse Rawls of neglecting the good of an individual and instead giving primacy to the good of society. However, the thorough reading shows that Rawls' main object of concern on the international level is justice of the individual, which can be accounted for only by accounting for the justice of the society. "Good" is interpreted differently in different cultures; different people need different things and consider different things as being just. Rawls respects the fact of reasonable pluralism; cosmopolitans deny it. Cosmopolitans deny that state institutions generate any special duties. They would argue that everyone has an equal duty towards everyone else and that fulfilment of these duties is accomplished easier through local-institutions, thereby assigning them a merely instrumental value.

The main aim of the cosmopolitan theory of global justice is the individual's well-being, in the liberal sense of "well-being". They think that Rawls' rational is wrong because if the law of peoples is supposed to be supportive of the internal justice of all societies then it is for the sake of the individuals living in those societies, or under those conceptions of justice. Cosmopolitans ask why they should *not* focus immediately on accommodating "underlying and indisputable interests" of individuals in securing their access to food, clothing, shelter, education, and health care (Pogge 1994). In doing so from the top-down, cosmopolitans force liberal values on non-liberal societies and do not leave the space for a gradual moral learning on both sides, liberal and non-liberal alike.

After what has been said, the conclusion imposes itself that the function of a global justice theory cannot be securing the well-being of individual in its liberal respect as a free and equal individual. To do that would demand an overall, universal, liberal definition of justice and it would be violating the fact of reasonable pluralism. If we do not want to do that we need to talk about the function of a global justice as the theory which brings about the conditions for peace and stability, securing the domestic justice being one of the conditions of it (Audard 2006).

## 1.4. CONCLUSION

This introduction was designed to show that the concept of global justice is a complicated one. There are many different views on how it can be theoretically perceived. All agree, though, that there are injustices in the world and that something needs to be done in order for the world to come to terms with them.

I started my theoretical discussion by elaborating on two traditional paradigms on justice: the Aristotelian and the Rawlsian. The gained knowledge I tried to apply to the world at large, as it is here and now, in order to observe the spectrum of different theories that emerge from this move. By now the reader should be aware that there is no easy theoretical solution to the problem of global justice. In what follows, I decide to take a path that derives from Rawlsian paradigm and further explicate his ideas. What this means is that justice is going to be seen as a matter of thinking in principles, i.e. an objective modus that connects different reasonable comprehensive doctrines, not favouring any one in particular. On a global plane this means finding principles that would order the relations among culturally and politically different societies. The goal I think we need to aim for is to create a modern worldwide *foedus pacificum*, a peaceful federation. Thereby peace is to be understood as a very rich concept. Peace first means absence of strife as well as the absence of immediate reasons for strife: hunger, poverty, unemployment, imperialistic desires, etc. Furthermore, a stable peace needs on one hand a stable constitution for a domestic society which provides for the local inhabitants and on the other foreign policy which would cherish friendly relations with other societies. If these friendly relations are in place and societies around the world qualify as being satisfied, we can confirm reaching global justice. This goal is still far from reality. However, reality can be pushed to work in that direction, as Rawls would say: "Political philosophy is realistically utopian when it extends what are ordinarily thought of as the limits of practical possibility. Our hope for the future of our society rests on the belief that the nature of the social world allows reasonably just constitutional democratic societies existing as members of the Society of Peoples." (LP: 6)

The next chapters will be dedicated to the thorough analysis of John Rawls' concept of global justice. The stepping stones of his theory will be clarified, i.e. the distinction between the ideal and non-ideal theory, the notion of peoples and finally the principles of the law of peoples. The approach will be same as in this introduction: I will first try to achieve conceptual clarity on what we are talking about, then deploy the method on hand before moving on to analyze the purpose of the end.

## CHAPTER TWO

### RAWLS' THE LAW OF PEOPLES: STRUCTURE, SUBSTANCE, FUNCTION

Thus far, I have established that the purpose of my analysis is to find the principles of global justice, i.e. principles for the international order that would be ethically acceptable, even required, but politically possible as well. This means that a theory is needed that respects cultural plurality while leading towards a peaceful and prosperous world without imperialistic tendencies from any particular political culture. The principles, therefore, must be culturally unbiased. They are to be decided during the course of one's reasoning and not by some pre-existing value. Rawls' idea was to provide us with a theory of this kind.

Rawls is probably the most influential political philosopher of 20th century. However, he is not an alluring writer. His writings are extensive and explanatory but not necessarily easy to read. His last book, however, *The Law of Peoples* (LP), seems to be different—an easier read but, unfortunately, also the least precise, least extensive and least explanatory of all of his works. Although the ideas presented in LP have undergone four different text versions, and have therefore have been carefully considered, their value is still a matter of debate. In the following chapters I will give an interpretation of Rawls' idea of a peaceful and consequently just international order.

Rawls calls his theory presented in LP “realistically utopian” and he opens the book with the notion that he is trying to account for the realistic utopia. This notion has been criticized. Being the servant of two masters, the idealistic and realistic one, his theory is either taken to be too idealistic or too realistic. As too idealistic, it does not deal with current controversial political issues, like those of severe poverty and the considerable differences in wealth and welfare among different societies; it uses the dubious word “peoples” to refer to politically organized societies and it suggests an international society without coercive measures. On the other hand, it is realistic as it accommodates non-liberal societies, and it narrows down the list of universal human rights. All of these aspects need careful examination.

The analysis to be undertaken here will first explain the structure of Rawls' theory and subsequently its content. Rawls divides his work in LP into two explicit parts: the ideal and the non-ideal. This division was previously seen in *A Theory of Justice* (TJ). However, since TJ is for the most part an elaboration of an ideal conception, the distinction ideal/nonideal is not given much space (TJ: §39 §58). In this chapter, I will first explain the difference and the need for the differentiation between the ideal and the nonideal theory before moving on to explain what these theories mean in substance.

## 2.1. CONCEPTUAL CLARIFICATIONS

The first step in dealing with the issue of ideal and nonideal theories will be some conceptual clarification. I will start with a basic discussion of the concepts of the theory, principles and rules and the question of what makes a theory ideal or nonideal. I will then turn to Rawls' explication of these theories.

### *Notes on Theory, Principles and Rules*

Given that my field of research is political philosophy, the questions I ask and the answers I seek are about how best to organize social life through public institutions. Arranging social life through institutions is a practical endeavour; I am interested in the theory of it. Political theory, however, is practice oriented *per se*. This gives us two ways of thinking about political theory. First, it is a method of summarizing praxis, subsuming past events under practical rules and further under general principles. This is descriptive theory. This theory tells us about what habitually used to happen in the past. Taking this into account we can then make predictions about the future, i.e. we assume that the actions will continue to happen uniformly. The other kind of theory aims at orientating the praxis. It specifies the kind of conduct that would be *appropriate* within a specific practice. The rules of games such as football are akin to this kind of theory. This second type of theory is normative for practice. Descriptive theory states some state of affairs. Normative theory points to states of affairs that have not yet been obtained but are desirable. Both theories make use of principles and rules. Principles and rules of a descriptive theory are general statements, though it is important to note that they are not action-guiding but action-explicating. Normative theory makes use of action-guiding principles and rules.

Principles and rules are often taken to refer to the same actions. However, a distinction is important in political philosophy as well as in law and politics. The word "principle" has its etymological roots in the Latin word *principium* meaning beginning, initiation, origin. It is a compound of the Latin adjective *primus* and the verb *capere*, and means "the first thing it takes to realize the project"; it points to the necessary conditions for the realization of the project (Domingo, 2010: 11). "Rule" has its etymological origin first in the thirteenth century and connects to concrete actions (Latin: *regare*) of a specific ruler (Latin: *rēx*).

Rawls lists five formal conditions for recognizing that something is a principle for a political order (TJ:

§23). First, principles should be general. This means that it must be possible to formulate them without the use of any proper names or definite descriptions (TJ: 131-132). The second condition is that principles are to be universal in application. This means that principles should hold for everyone by virtue of everyone being moral. This means that all parties involved must be able to understand and use the principles in their deliberation. A third condition is that of publicity: parties will all know and accept the principles of justice and “their awareness of the general acceptance should have desirable effects and support stability of social cooperation” (TJ: 133). The fourth condition is that principles should address the correct ordering of conflicting claims, meaning that principles must serve to adjust competing demands. Finally, there is the condition of finality: “The parties are to assess the system of principles as the final court of appeal in practical reasoning” (TJ: 135).

In TJ, Rawls states that the rules are to satisfy a certain conception of justice and the conception of justice is formally defined through principles. Rules are adherent to principles, they are interpretations of the principles. An institution is just if its rules correspond to the principles of justice. A principle marks the beginning of the road; a rule indicates which direction we should take (Domingo 2010: 15). Regarding the distinction between principles and rules, I follow Ronald Dworkin’s discussion in his book, *Taking Rights Seriously* (1977). Hence, I assume that generally speaking, practice is directly guided by rules since they are more specific, and as such can be accounted for through principles (whether those that are action-guiding or those that are merely general descriptions). Dworkin differentiates principles from rules in three main aspects:

1. As a matter of a degree: compared to rules, principles are broad, general, unspecific. This means that often what would be regarded as a number of different rules can be exhibited through a single principle.
2. As a matter of desirability: principles refer more or less explicitly to some purpose, goal, entitlement, or value, are regarded from some point of view as desirable to preserve or to strive for. A principle like: “No man should profit from his own wrongdoing,” states a reason that argues in one direction. It makes us decide what rule to apply in a specific situation (Dworkin 1977: 25).
3. As a matter of exclusiveness: according to Dworkin, rules function in the reasoning of those who use them in an “all-or-nothing manner”. This means that if a rule is valid, it conclusively determines the result or outcome, e.g. “A maximum speed on the turnpike road is 60 m.p.h.” – any rule which asserts otherwise would be invalid. Principles differ from rules because they have a dimension of significance but not validity, and therefore it is in conflict with another

principle of greater weight; one principle may be overridden and fail to determine a decision, but will none the less survive intact to be used in other cases where it may win in competition with some other principles of lesser weight. One who must resolve the conflict has to take into account the relative weight of each. This judgment will often be a controversial one. Nevertheless, it is an integral part of the concept of principle to ask how valuable it is (Dworkin 1977: 25). Rules, on the other hand are either valid, in which case the answer they supply must be accepted, or they are not, in which case they contribute nothing to the decision (Dworkin 1977: 22). If initially formulated rules conflict, only one of them “survives”. Principles can account for more than one rule, depending on the concrete situation, as long as the principle stays as a final court of appeal and as long as it shows us how then the system of rules is to be ordered.

### *Idealization*

The distinction between ideal and nonideal has to do with the conditions in which a theory evolves. There are two ways a theory can be said to be “ideal”. It can ignore certain existing aspects which are deemed inessential, or it can add certain non-existing aspects which are deemed desirable (cf. O’Neill 1989). The first is usually referred to, as an abstraction while the latter is a genuine idealization. Abstractions are often used in the natural sciences. The method is also known as Galilean because it builds on the method Galileo used for establishing gravitational acceleration. Galileo investigated how bodies that differ in mass move in a medium of no resistance. The differences in their velocity had to depend solely on their mass since that was the only distinctive characteristic in the experiment. Hence, Galileo abstracted all unnecessary, possibly unfavourable conditions in order to find an answer for his research problem. This method is often referred to as idealization although it is clearly an abstraction.

Genuine idealization, however, is usually used in the social sciences where still non-existent but desirable states of affairs are contemplated, e.g. political or social systems. Here scientists usually do not abstract from the given conditions but rather embellish the present conditions: they imagine favourable natural conditions and/or full compliance of the agents. Hence an ideal theory emerges under embellished, not real, conditions. The reason for doing this is the simplicity of the research and impossibility to account for all unfavourable factors. The logic behind the endeavour is to see what the best possible case looks like and then to use it as a standard for all the worst-case scenarios. Consequently, ideal theory deals with the best possible cases and originates as the product of genuine idealization.

Nonideal theory is its counterpart; it takes reality on its face value with all of its unfavourable conditions.



It either summarizes, i.e. describes these conditions and the actions of the agents under it, or it points to how the agents should act if these unfavourable conditions were to be obtained.

Both ideal and nonideal theories can be either descriptive or normative. We can imagine that an ideal theory, a theory about some embellished state of affairs, could be descriptive of that state of affairs, or rather could prescribe actions for the elements of the embellished state of affairs. The same goes for a non-ideal theory. It can simply describe, or it can offer concrete action-guiding principles for the current non-ideal state of affairs.

Thus, the function of non-ideal theory, both in its descriptive and normative versions, seems clear: it deals with reality. It either describes reality or prescribes the ways it ought to be changed. The function of ideal theory, however, is not immediately clear. It is usually said that ideal theory is a kind of guideline or a goal for the real world. The question is *how* it guides. There are, in my view, two primary ways. Ideal theory may be seen as:

- a. giving a final desirable state of affairs (teleological function);
- or
- b. giving the kinds of practice-guiding principles that would be appropriate for societies in which the ideal state already obtains (deontological function)

In the first case, descriptive ideal theory is a guideline, a goal for real-world affairs. In this case, normative non-ideal theory does the concrete work, i.e. specifies the steps, the concrete actions, the rules to be undertaken in order for an ideal state of affairs to come into being. The action-guiding principles, or rather specific rules, pertain to the normative nonideal theory. The descriptive ideal theory formulates goals. These guide the principles of normative nonideal theory.

In the second case, ideal theory coincides with the normative non-ideal theory in specifying the concrete steps. Agents of a real world act as the agents of an ideal world would act. The idea is to condition current affairs for the world to come. This second path is more demanding because it puts enormous pressure on reality and does not allow for gradual change to take place. In TJ, Rawls uses the ideal theory in the first sense.<sup>26</sup> TJ gives us principles for a just domestic society; these principles account for our reasonable, rational and impartial thinking about justice. They describe how institutions

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<sup>26</sup> This does not mean that Rawls is making concessions in the direction of consequentialist philosophers. The content of an ideal theory is constantly in process. Its goal is not some previously defined value or standard. All the elements of the procedure and the outcome of the constructivist's procedure are changeable and constantly going through the process of reflective equilibrium and public reason. His theory is not asking for sacrifices from any member or part of society. Rawls' idea is that all need to be "satisfied".

would be organized under ideal, i.e. favourable, conditions. TJ gives us a *descriptive* ideal theory about justice. In TJ, Rawls even goes one step further and speaks of institutional arrangements that would accommodate these principles of justice. He is answering the question about what a political system that respects his two principles of justice should look like. His answer is that it should be a democracy in which private property is recognized. Thus, in TJ, Rawls gives a *normative* ideal theory as well.

For my discussion, however, it is interesting to determine what concrete impact this ideal theory has on our daily political life, which is not ideal. If we take it to be a goal towards which we strive, we also need to specify the steps about how to get there. The normative aspect of nonideal theory does this work.<sup>27</sup> On the example of Rawls' TJ, if people feel treated unjustly they *should* show civil disobedience, they *should* refuse to comply with unjust policies, they *should* practice their public reason and constantly reflect on principles for the just theory and on judgments of daily moral decisions. In this way, citizens of the nonideal unjust world will come to improve their world ever more, in the hope of one day living in the society which affirms the two principles of justice.

As we shall see, LP is also for the most part aimed at giving an ideal theory: ideal and perfectly complying societies under favourable conditions choose the principles for the just world order. Rawls envisions a Society of Peoples which would correspond to the ideal principles of global justice. Rawls is rather scarce in describing the concrete institutions in the ideal realm, he mentions organizations like the United Nations and the World Bank, but we do not get any elaboration of these ideas. As concrete steps for getting to the ideal state of affairs, Rawls explicitly lists war, intervention and global public reason. I hope to show here that this, though not wrong, is not a sufficiently extensive elaboration on the rules for nonideal theory. These are guided by the ideal theory, and hence Rawls' principles for the ideal theory of international relations are deficient. His theory on the whole is the right one with respect to its structure, methodology and elements. However, the final result for the principles will need to be revised, which I hope to do here.

The distinction between descriptive and normative within ideal and nonideal theory is not explicit in Rawls. Rather, it is implicit, and it can, in my opinion, be understood from the four goals of political philosophy Rawls states in the opening chapters of JF and LHPP (cf. §1.3.).

In citing the main goals of political philosophy, Rawls places the primary focus on the mostly disputed questions (JF: 2). We start with defining the problems (descriptive non-ideal theory). The second goal of political philosophy is, according to Rawls, that of orientation (JF: 3). The descriptive ideal theory accounts for the orientation. The third goal of political philosophy is that of reconciliation; reconciliation with our world in the sense of understanding its institutions and their rationality, and consequently their

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<sup>27</sup> Beitz also affirms that the ideal theory prescribes standards that serve as goals of political change in the nonideal world. (Beitz 1999: 156)

possibility for change. This goal is achieved through extensive work on normative nonideal theory. Finally, normative ideal theory deals with the principles for utopia, but if my initial discussion has been carefully followed, then it will be clear that the premises of normative ideal theory are not entirely utopian, but actually practically possible. This means that the principles of normative ideal theory can take the form of rules that have been confirmed to be answers to concrete political problems, and can therefore be used to once more extend our thinking about the future desirable state of affairs.

The four questions that ideal and nonideal theory for political society (or the world at large) in their descriptive or normative forms answer, are the following:

1. What does our society/world look like? (descriptive nonideal theory)
2. What does a society which mitigates undeserved inequalities look like? What does a world of satisfied peoples look like? (descriptive ideal theory)
3. What should we do in order to become a well-ordered society? What should we do in order to become a part of a society which satisfied peoples? (normative nonideal theory)
4. How should the political institutions for an ideal domestic society look? How should the institutions for a world of satisfied societies be arranged? (normative ideal theory)

Table two shows schematically how the above questions are answered, and how the entire categorization works within Rawls' theory of domestic and global justice. Having established this, I turn to the explication of substantial elements of these theories.

Table 2:

	Nonideal	Ideal
Descriptive	State of undeserved inequalities (TJ: §2)/ War and atrocities (LP: 7)	Well-ordered society with its two principles of justice (TJ: Ch II) /Society of well-ordered peoples with the principles they abide by (LP: 35-44)
Normative	Civil disobedience; conscience refusal (TJ: §55-56), coercive instruments of state (TJ: 241) / War; Intervention; Assistance (LP: 89-113)	Property owning democracy with its institutions (JF: 89) / Institutions similar to UN, WB, Some kind of world-wide center for public reason (LP: 44)

### 2.2.1. IDEAL THEORY FOR A DOMESTIC SOCIETY

Rawls explains the distinction between ideal and non-ideal theory as follows: “The intuitive idea is to split the theory of justice into two parts. The first or ideal part assumes strict compliance and works out the principles that characterize a well-ordered society under favourable circumstances.” (TJ: 245)

This means that for once the circumstances in which theory evolves have been idealized: society is taken to be self-contained, the population consists of physically and mentally capable adults and it exists under the favourable natural and historical conditions, i.e. no wars, natural catastrophes, and only moderate scarcities (Valentini 2009: 332). Secondly, it means that capable adults are fully complying with the principles of justice, i.e. with just institutions. Rawls’ TJ is, for the most part, an ideal theory, i.e. it explains how duties and rights are distributed within an ideal society in which everyone finds his/her legitimate expectations fulfilled, i.e. everyone is satisfied. This means that institutions take into account undeserved inequalities, e.g. differences in talents, class, race, etc. and mitigate them in a way that allows everyone to practice his/her idea of a good life. Society is a cooperative venture. Its ideal version does not demand that some sacrifice their life plans for the good of others.

#### *Descriptive Ideal Theory for Domestic Society*

Principles of justice for a domestic society are arrived at through the constructivism method, using the idea of the original position as a device for impartial decision-making. The point is that those who engage in social cooperation choose the principles which assign basic rights and duties to everyone (TJ: 11). Members of a society choose these principles from behind the veil of ignorance, not knowing their social position or any advantages or disadvantages they may have in actual society. The principles are an *ex ante* agreement on the charter of mutual rights and duties.

Once in place, the ideal theory accounts perfectly for the sense of justice of fully-capable adult persons. This means that they do not think of their society as being unjust. This again than means that, although the principles have been chosen through impartial reasoning and are not predetermined by any specific value, authority, or notion of personal advantage (they are *ex-ante*), there is some capacity common to all men that accounts for them. Rawls calls this common capacity a sense of justice. Principles of justice describe its content. By introducing the notion of a sense of justice, Rawls occupies a middle position between realism and relativism: there is a capacity common to all, but its content is not

predetermined by any pre-given notion; it develops and changes out of itself.<sup>28</sup> This common faculty or sense of justice develops in three stages:

1. **The morality of authority** develops in early childhood, when the child takes the parent as authority. It is governed by the "first law: given that family institutions are just, and that the parents love the child and manifestly express their love by caring for his good, then the child, recognizing their evident love of him, comes to love them" (TJ: 490). Children obey their parents without questioning them since they do not have sufficient knowledge and/or lack the concept of justification (CP: 101). What they have, though, is a feeling of security and trust and love which is a reaction to the love of their parents.

2. **The morality of association** encompasses the moral standards appropriate to an individual's role in the various associations to which he belongs. It is governed by the "second law: given that a person's capacity for fellow feeling has been realized by acquiring attachments in accordance with the first law, and given that a social arrangement is just and publicly known by all to be just, then this person develops ties of friendly feeling and trust toward others in the association as they with evident intention comply with their duties and obligations, and live up to the ideals of their station." (TJ: 490) Attitudes generated at this stage play a decisive part in the stability of political society. If the fellow-feelings of trust and friendship persist, then there is no fear of diffraction and free-riding, and no need for coercion (CP: 105).

3. **The morality of principles** is practiced by individuals who become attached to principles themselves in accordance with the "third law: given that a person's capacity for fellow feeling has been realized by his forming attachments in accordance with the first two laws, and given that a society's institutions are just and are publicly known by all to be just, then this person acquires the corresponding sense of justice as he recognizes that he and those for whom he cares are the beneficiaries of these arrangements." (TJ: 491) At this stage the person becomes attached not to the other persons, but to the principles.

Thus, we can say that Rawls' conception of justice with its two principles describes our sense of justice. Ideal theory for a domestic society presented by the two principles is descriptive of an ideal state of affairs which gives content to our sense of justice and actually summarizes our thinking about how justice should be. This descriptive ideal theory is normative for our world because it asks for changes in it until our sense of justice is fully satisfied. In a society ordered by principles of justice all three stages of moral development work together. The development from a lower to a higher stage can always be

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<sup>28</sup> This self-determination of the sense of justice makes this capacity different from Aristotle's *hexis*, which is simply satisfied with some pre-given value.

triggered by the questioning of the authority in the context of fulfilment of one's own potentials and expectations. This is a complicated problem which I do not plan to pursue here.<sup>29</sup>

### *Normative Ideal Theory for a Domestic Society*

In TJ, Rawls even goes a step further and explains what the institutions of this ideal society should look like. This account should add to the stability of the whole project. Rawls elaborates on possible ideal institutions through the so-called four-stage procedure. Each stage requires a thinner veil: in the first stage, two principles are elected; in the second, constitutional provisions will be decided on; the third would decide on legislation; and the fourth would establish an impartial judicial system. In every stage, the parties know more, until finally at the stage of judicial review the veil has been completely lifted. Rawls thinks that the institutional organization that would be elected under these conditions is that of a property-owning democracy. Property-owning democracy realizes all the main political values present in two principles of justice (JF: 135). It foresees widespread ownership of capital and means of production so that workers can control real capital and their own work conditions, either as private persons or as members in collective bodies such as syndicates, organizations etc. Rawls does not exclude the possibility of non-workers being owners of means of production, but excludes the possibility of them being the sole owners. By giving access to the means of production to everyone, the condition of self-respect is fulfilled. In classical welfare states, welfare of some depends on the charity and good will of others and does not give any incentive to the beneficiaries to work harder in order to improve their position. Property owning democracy assures fair equal liberties and opportunities and through extensive taxation system does not allow for the emergence of huge differences among social classes (JF: 161; TJ: 278-79).<sup>30</sup> Thus, normative ideal theory uses principles of justice and asks which institutions express these ideas in the best way. It asks, in other words, how political reality in the ideal society should look like.

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<sup>29</sup> A good example of how moral learning happens when an authority hinders the development of individual capacities is the recent movement of the so-called "Arab Spring". At the very beginning of the movement we had the gesture of Mohammed Bouazizi, a 26-year-old Tunisian who set himself on fire in December 2010 because the police confiscated the goods he was selling on the market. He was beaten when he resisted. The officials then refused to hear his complaints. He decided to make a public statement of his desperation. His act expressed how many across the Arab world felt: frustrated about the living standards, police violence, absence of legal protection, high unemployment, lack of human rights. In these circumstances, one's own capacities cannot develop and authorities need to be questioned. The mass protests began in Tunisia on the same day of Bouazizi's act and rapidly spread across the region. Questioning the authority as the final court of appeal does not mean diminishing the loyalty one feels towards the members of the same association. It only means protecting oneself and co-associationists from injustices, it means accounting for one's own sense of justice and being satisfied.

<sup>30</sup> Rawls writes: "I now want to survey what would seem to be the main features of a well-ordered democratic regime that realizes those principles in its basic institutions. I outline a family of policies aimed at securing background justice over time, although I make no attempt to show that they will actually do so" (JF: 135).

### 2.2.2. GLOBAL IDEAL THEORY

Rawls develops an idea of justice for the world-order as an extension of the general social contract idea for a domestic society. This means that he uses the same justification, i.e. the same methodology as in the domestic case, in order to arrive at the principles of justice for the world at large. This also means that the theory of global or international justice is also an ideal theory.

The separation of the ideal and nonideal part is explicit in LP. Ideal theory, again, evolves under favourable natural conditions e.g. well-ordered government structures, no unreasonable scarcity of resources, no natural catastrophes. Furthermore, it deals with fully compliant subjects: well-ordered, satisfied societies, which Rawls named “the peoples”.<sup>31</sup>

#### *Global Descriptive Ideal Theory*

The procedure for arriving at the principles of global, i.e. international justice is again one of the original position. Parties are placed under the veil of ignorance and contemplate the principles for a just world order. The parties are representatives of societies. They do not have any particular knowledge about the society they belong to but are aware of the general facts of geography, sociology, politics, economics, etc. The parties here are not *noumenal*- but political selves or rather the ideal statesmen with no particular knowledge. They know, however, that their society has a particular conception of justice that is worth defending. Even at the level of methodology, the analogy with the domestic case fails since Rawls realizes that he needs two original position procedures. These are to be completed in parallel: one for well-ordered liberal societies and one for well-ordered nonliberal societies. The necessity for two original positions is due to the differences in political regimes and the need for equality of the parties in the original position (cf. § 1.2.1.). Liberal regimes defend the conception of justice that is based on principle-thinking, or the highest stadium of moral development; non-liberal societies are very much dependent on the morality of association but, as will be explained in chapter three, they do account for principles in the sense that their citizens actively question the authorities and demand an explanation when they are not satisfied. Members of these non-liberal societies, so-called decent societies, are also satisfied.

Thus, both types of societies are able to organize themselves in such a manner to satisfy their populations, which means that the institutions of these societies are well-ordered. They share a

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<sup>31</sup> The political system of well-ordered peoples is such that human rights of its peoples are respected, there exists a common conception of justice which everyone are ready to defend and everyone are satisfied with the institutional implications of this conception. Furthermore, everyone has the explicit or implicit right to express their opinion: either directly in public forums or through representatives. Well-ordered peoples may be, but are not necessarily, liberal. Liberal well-ordered peoples, however, ideally have they kind of political institutions that support Rawls's two principles of justice.

common capacity for being well-ordered. However, a global theory will ask how these well-ordered societies conduct their foreign-policies. Analogous to the sense of justice of the individual, well-ordered societies have a moral nature which accounts for foreign relations being reasonable, i.e. foreign relations which take the interests of others into account. The moral nature of societies makes sure that people continue to be satisfied with their domestic arrangements. Societies act morally if foreign relations *protect* internal well-orderedness, *support* internal well-orderedness and *assist* in the cases when internal well-orderedness is endangered. Hence, at any time, members of these societies need to persist in their feeling that they live in just societies.

Therefore, there must be three kinds of principles: those of protection, enhancement and assistance in well-orderedness. Rawls lists eight principles, which have their basis in the history and tradition of international law, and have proven to be successful. I think Rawls' intention in the ideal theory was correct, however I do not agree with the choice of principles. I will explain this further in subsequent chapters (cf. §4; §5; §6).

#### *Global Normative Ideal Theory*

Again analogous to the domestic case, we would expect that ideal theory suggests what the institutions among these well-ordered peoples should look like. Now the analogy is incomplete in the sense that there is no unified institutional body that would delegate rights and duties and the distribution of social benefits. There is no world state.

Rawls is decidedly modest in explicating institutional arrangements that are to support the described principles. The peoples are to form a Society of Peoples, i.e. a loose union of coexistence and cooperation that cares for the same values expressed in the eight principles of the law of peoples but which does not have a political constitution. The peoples form different agencies that are to deal with different aspects of their cooperation: an ideal version of the UN or an ideal version of the IMF, or centres for consultation and discussion. These institutional arrangements are mentioned briefly because the very element of well-ordered societies and their foreign policy attitudes have not been realized and hence their interaction would assume double idealization (one at the level of domestic policy and the second on the level of foreign policy) and would be hardly imaginable in the reflective equilibrium procedure.

The point of orientation or teleological aspect of an ideal theory is analytical inquiry into the possibilities of foreign policy of current states. Thereby, descriptive ideal theory serves as a guideline. Normative aspects of the ideal theory are rather scarce.



### 2.2.3. PROBLEMS WITH IDEAL THEORY

The concern of many theorists (Cohen, Farrelly, Valentini) is that this idealization, which seems necessary in order to make it clear which state of affairs we wish to have, makes the theory too fact-insensitive (Cohen) or too far from reality that it is impotent as a concrete problem solving directive or, for that matter, as a motivational force. Hence, there are two open questions: How does ideal theory offer solutions to real-world problems? How does ideal theory offer guidance if it is too far from reality? In my view, the first question is easy to answer since the ideal theory is not supposed to offer a concrete hands-on solution to a concrete problem. It “is a way of continuing public discussion when shared understandings of lesser generality have broken down” (PL: 46). The task of political philosophy and ideal theory is to reduce (hopefully resolve) such disagreements, offering a “public framework of thought” (PL: 110) from within which to assess questions of justice. In other words, it is supposed to make us aware of the direction in which solutions to the problem may lie. As already indicated, it will be the role of normative non-ideal theory to provide us with the actual steps for solving the problem.

The second question is harder to answer: if it can be shown that ideal theory does not motivate or is vague as a guide, then it does not seem to have any function at all. It can fail as a guideline if it is too utopian or if people simply do not use it as their shared platform for settling their disputes. The reasons for that may be many: laziness, moral conformity, selfishness etc. However, the answer to this scepticism about the ideal theory was conclusively given by Laura Valentini:

“The fact that people lack the motivation to act in accordance with principles of justice is certainly regrettable. However, it does not count as a reason against the validity of a conception of justice. The point of a theory of justice is precisely to give us a conceptual framework from within which to criticize existing agents who do not conform to it. If it is *reasonable* to expect compliance, the fact of actual non-compliance tells us nothing about the adequacy of the theory itself” (Valentini 2009).

The charge of utopianism also does not hold for Rawls’ theory. Rawls thinks that the ideal theory he presents is the one “that we are to achieve if we can” (TJ: 246). This simply means that men for men, within the boundaries of human possibilities, create the theory. He follows Rousseau in taking “men as they are and laws as they may be” (LP: 9). The key figure in constructing the ideal theory of justice is Rawls’ reader and his reflecting powers. All elements of construction are changeable if, for example, our considered judgments, which are the starting point of construction, change. This is however, unlikely to happen.

This still does not answer the question how an ideal theory guides action in real-world circumstances that are less than ideal and where concrete injustices arise. The straightforward answer is that ideal theory does not offer concrete rules, concrete “ways out” of real world problems. It offers the best

possible end- scenario from which we can take how best to cope with the historical, natural and personal contingencies. Solutions to concrete problems are given by what I call normative-nonideal theory which bridges the gap between real world problems and the ideal state.

### 2.3. NONIDEAL THEORY IN RAWLS

In defining nonideal theory, Rawls writes: “Nonideal theory is worked out after an ideal conception of justice has been chosen; only then do the parties ask which principles to adopt under less happy conditions (...) one part consists in governing adjustments to natural limitations and historical contingencies, and the other principles for meeting injustice” (TJ: 245)

The real world is full of contingencies which need to be dealt with in order for the ideal state of affairs to be approached, and this is the work that is to be done by nonideal theory. Once the ideal theory is identified, at least in outline, “nonideal theory asks how this long-term goal might be achieved, or worked toward, usually in gradual steps. It looks for courses of action that are morally permissible and politically possible as well as likely to be effective.” (TJ: 246).

Holding to our proposal to split the ideal, as well as nonideal, theory into its descriptive and normative parts, I will conclude here that descriptive nonideal theory identifies the problems in the real world, e.g. lack of talents, significant class differences, hunger, diseases, corrupt institutions, wars etc. Ideal theory then shows how world affairs are supposed to be, and normative nonideal theory gives concrete direction about what we should do in order to get to an ideal state of affairs. Normative nonideal theory bridges the gap between the nonideal world and an ideal state of affairs by specifying concrete actions as answers to concrete problems. It is still theoretical thinking, although more substantial, more specific than that of ideal theory. Alluding to Dworkin’s distinction between principles and rules, I can claim that normative nonideal theory is “inhabited” by rules. These are the “shoulds” for the behaviour of real-world agents in specific situations, whereby ideal theory is a goal. Ideal theory dictates the objective, while nonideal theory dictates the route to that objective (Simmons 2009). It “studies the principles that govern how we are to deal with injustice” (TJ: 8).

#### 2.3.1. NORMATIVE NONIDEAL THEORY FOR A DOMESTIC CASE

In defining nonideal theory, Rawls writes:

“Nonideal theory, the second part, is worked out after an ideal conception of justice has been chosen; only then do the parties ask which principles to adopt under less happy

conditions...one part consists in governing adjustments to natural limitations and historical contingencies, and the other principles for meeting injustice" (TJ: 245).

Hence normative nonideal theory deals with unfavourable, natural or manmade, conditions as well as with non-compliance of the agents of justice. Ideal theory lays out what institutional arrangements, which make the best out of these contingencies, look like. Normative non-ideal theory offers rules concerning what to do when this is not the case.

Let me give a few concrete examples. Ideal theory, in Rawls' interpretation, advocates the most extensive total system of equal liberties. A particular historical and social situation may be such that there is a presence of extremist groups (this would be a highly non-ideal situation). Thus, normative nonideal theory needs to provide us with a rule specifying how to react in these situations. The concrete rule may require that the liberty of conscience and freedom of thought be narrowed (cf. TJ: 248). Hence, the total system of equal liberties is still the same, the ideal is preserved, and it is only narrow rather than wide, i.e. some liberties are not practiced to their fullest extent or are temporarily suspended.

Furthermore, normative nonideal theory is said to provide rules for the cases of natural limitations. This means that ideal theory presupposes that all individuals may be treated as free and equal, with completely developed moral powers and completely capable of creating and following their own visions of a good life. However, it may be that due to some misfortune or accident, individuals lose the capability to advance their own interests, i.e. are no longer capable of taking a decision for their own good. These individuals, e.g. the seriously injured or mentally disturbed, behave similarly to children. Not only are they incapable of advancing their visions of a good life, they can even seriously damage it. Hence, others need to act on behalf of these people, and do for them what they would do if they were completely rational. Others need to act paternalistically. The benefactors' own preferences and interests guide paternalistic decisions. In the event that benefactors know little about beneficiaries, they act for the beneficiaries as they would act for themselves: from the standpoint of the original position, thereby having ideal theory as a final court of appeal. The concept of paternalism is a complex one and the problems that arise from it will be discussed in chapter five, but here it is worth noticing that although it may never be a principle of an ideal theory since it means taking decisions for others, it can be used as a rule in a concrete case in order to approach an ideal state of affairs.

Finally, normative nonideal theory deals with cases of non-compliance, or as Rawls terms it in TJ, of partial compliance. There may again be two cases of partial compliance: one in which individuals do not fully comply and one in which institutions do not fully comply. The former is the case when just institutions are in place but individuals do not fulfil their part of social duty and free-ride. The state

deploys coercive measures against these cases that include legal punishment, even imprisonment. Rawls says that even under reasonably ideal conditions it would be hard to imagine a successful income tax on a voluntary basis, because owing to human psychology such an arrangement would be unstable. The goal for introducing a public system of rules with a system of sanctions is to overcome this instability.

The other case of partial compliance is when institutions do not correspond to the principles of justice and do not account for our sense of justice, i.e. we feel that injustice is being done. In those cases, individuals, or rather citizens, are allowed not to comply with the demands or orders of the institutions for the sake of re-establishing justice. Rawls elaborates on two ways for doing this: civil disobedience and conscience refusal. Civil disobedience occurs when the narrowing down of liberties for a certain group has crossed the limit of historical or social tolerance, i.e. of what may have possibly been tolerated for the sake of preserving or arriving at just institutions. The duty an individual has towards the law, which may have been legitimately elected by the majority, conflicts with the right to defend one's own liberties and the duty to oppose injustice. Hence, the individual decides to be disobedient, to use a concrete action for the sake of re-establishing justice.

Rawls defines civil disobedience as "a public, non-violent, conscientious yet political act contrary to law usually done with the aim of bringing about change in the law or policies of the government" (TJ: 364) It is a political act provoked by a quest for justice, not group or self-interest, although these may sometimes coincide. It is furthermore a public act, which means that it is done openly with fair notice; not covertly or secretly. One can compare it to public speech, and hence it is non-violent. It corresponds to the ideal of public reason. After all, ideal theory presupposes an ongoing discussion of the members of a society and the possibility of constant improvement of the precepts of justice. Nonideal theory uses this notion of free, open, non-violent speech and engages it where the precepts of justice have been violated. Civil disobedience therefore uses an ideal method in nonideal circumstances, and in that respect it also expresses the disobedience to law within the limits of fidelity to the law. It appeals to the sense of justice in the majority.

Conscientious refusal is a concept very similar to that of civil disobedience; it implies non-compliance with a more or less direct legal injunction or administrative order, e.g. refusal of a convinced pacifist to serve a military service. The authorities know one's action. It is a covert act but not one done in a public forum, nor one which appeals to the sense of justice in the majority. It is not necessarily based on political principles but rather on religious or other principles at variance with the constitutional order. However, the principles are not supposed to be incompatible with the constitutional order overall, but rather in certain aspects, and as such generally acceptable. To apply conscientious refusal is to decide

in the concrete case that within the individual's framework of justice there are certain aspects that are not satisfactory to one's personal well-being, and it is acceptable to express that.

### 2.3.2. NORMATIVE NONIDEAL THEORY FOR INTERNATIONAL RELATIONS

In LP, Rawls also makes the distinction between ideal and nonideal theory. The descriptive part of nonideal theory will not be elaborated here, since Rawls does not pay much attention to it. It suffices to note that Rawls identifies the concrete problems of our world in the opening pages of LP as: unjust war, oppression, religious prosecution, denial of liberty of conscience, starvation and poverty, genocide, mass murder, etc. (LP: 7). Rawls then goes on to construct an ideal state of affairs which does not have these problems and hopes the schema he offers will then provide answers even to the problems he does not mention.

Ideal theory is a description of the world of well-ordered peoples. Hence we read in part three of LP that the ideal conception should guide the way that well-ordered peoples deal with non-well-ordered peoples (LP: 89). A few lines later we read: "On the assumption that there exist in the world some relatively well-ordered peoples, we ask in nonideal theory how these peoples should act toward non-well-ordered peoples" (LP: 89). The final goal is that of a peaceful world of satisfied societies. It is then presupposed by the normative nonideal theory which explains how this world might be achieved "or worked toward, usually in gradual steps" (LP: 89). Normative nonideal theory is a transitional theory which explains how "to work from the world containing outlaw states and societies suffering from unfavourable conditions to a world in which all societies come to accept and follow the Law of Peoples" (LP: 90).

In LP, Rawls also writes that normative nonideal theory should answer the problems of unfavourable conditions as well as to those of non-compliance: "One kind deals with conditions of non-compliance, that is, with conditions in which certain regimes refuse to comply with a reasonable Law of Peoples. These we may call outlaw states, and I discuss *what measures* other societies — liberal peoples or decent peoples — may justifiably take to defend themselves against them. The other type of nonideal theory deals with unfavourable conditions, that is, with the conditions of societies whose historical, social, and economic circumstances make their achieving a well-ordered regime, whether liberal or decent, difficult if not impossible." (LP: 5).

Consequently, under unfavourable conditions, Rawls understands all the natural, historical and social circumstances that prevent a society from having a viable government and in that respect from being a respectable member of the international community. Such a society is not aggressive *per se*, nor expansive, but it lacks political traditions, cultural traditions, human capital and know-how and often also material and technological resources for being well-ordered. In that sense, it is "burdened" and

needs help. Normative nonideal theory explains how far this help should go and what kind it should be.

Rawls' thesis is that a well-ordered society is not necessarily rich, neither in resources nor in gross domestic product (GDP). It is well-ordered in the sense that it has an adequate political structure which enables a rational use of the available resources for the purposes of the society's conception of justice. Hence, its people are satisfied: they have a minimum or even more than a minimum of means of subsistence and power to express and develop their conceptions of a good life within the political system they live in, i.e. they are free to determine their own fate. The assistance towards burdened societies would then try to undo the consequences of burdens. Nonideal normative theory that deals with unfavourable conditions for a world at large criticizes policies that are imposed on the burdened society from the outside and against their will: policies towards changing or establishing political institutions in a certain country need to be accepted within the society as its own. Outsiders may suggest and educate, no more, no less. Rawls is highly concrete on this and therefore what he calls the principle of assistance is actually a concrete rule of assistance which *per se* excludes other ways of assistance, e.g. giving plainly monetary donations (cf. §4 of this work). Rawls explains that there is no easy recipe for helping burdened societies; the rules employed in a specific situation may vary from one burdened society to the next.

The non-compliance type of non-ideal theory deals with despotic or imperialistic aspirations of so-called "outlaw states". These states directly violate the values of liberal and decent societies. Even more so, they infringe on basic human rights, on the domestic level and in their foreign policy, and violate the codes of international cooperation. This means that they wage wars for reasons other than self-defence and are unreliable partners for international agreements since they only pursue the interests of an elite minority. Hence they deliberately fail to comply with international rules and are not guided by the ideal theory in their internal or foreign affairs but by the interests of their corrupt elites. If such a society wages a war against a well-ordered society, the well-ordered society has a right to self-defence. A forceful intervention may also be called for if the offences against human rights are egregious and other means of persuasion are exhausted, e.g. diplomatic talks or economic sanctions. Intervention in these cases is acceptable or even called for.

Rawls develops a theory of just war. It specifies rules that may legitimately be used to counter non-compliance, i.e. rules that are morally permissible. The idea is that war is acceptable only as a transitional tool which leads towards a peaceful and just world. Hence as a measure of normative nonideal theory that leads to the ideal state of affairs.

However, before it goes that far, in terms of violent measures, well-ordered societies may publicly

criticize the policies of outlaw states, they may deny those outlaw regimes economic assistance and refuse to admit them to mutually beneficial organizations. Here, Rawls distinguishes between primitive outlaw states that do not seek contact with the well-ordered societies and those that are more advanced and do (LP: 93). The former may be influenced only with force, i.e. war, while the latter may change their practices under the influence of economic or cultural sanctions.

Table three below summarizes what has been said thus far with respect to the actions nonideal theory takes to be appropriate on account of conditions in which the theory evolves and on account of agents that are going to be subdued to the specific rules of nonideal theory.

Table 3:

Normative Nonideal Theory	Domestic Justice	International Justice
Unfavourable conditions	INDIVIDUAL: paternalism	SOCIETY: duty of assistance
	INSTITUTIONS: institutional limitation of liberties	INSTITUTIONS: /
Non-compliance	INDIVIDUAL: legal punishment	SOCIETY: public critique; sanctions; just war
	INSTITUTIONS: civil disobedience/ conscience refusal	INSTITUTIONS: /

### 2.3.3. PROBLEMS WITH NONIDEAL THEORY

Normative nonideal theory mandates specific rules that are “morally permissible, politically possible and likely to be effective” (LP: 89). However, Rawls does not explain how these three conditions are to be weighed against each other, e.g. is that which is politically possible but morally questionable (although it may be effective), going to be given a greater value than morally valuable but politically undesirable and questionably effective? Or is the goal to find the optimal policy that satisfies all the three requirements in the best possible way (Simmons 2009)?

However we decide to answer these questions, it is certain that demands for moral permissibility, political possibility and factual effectiveness need interdisciplinary collaboration of philosophers, politicians and lawyers on the one hand and extensive and solid ideal theory on the other. Rawls’ theory is capable of living up to this task.

## 2.4. CONCLUSION

Rawls' theory of justice, in its domestic as well as in its global version, is aimed at defining the principles of justice. Rawls defines an ideal theory capable of serving as a goal for the world here and now. An ideal for a domestic case is a well-ordered society. An ideal for the world at large is a society of satisfied peoples. The changes that need to be implemented in our world, here and now, in order for it to approach the ideal need be undertaken in gradual steps. Ideal theory establishes the principles of justice; normative nonideal theory then provides, in outline form, the steps towards it. Hence, Rawls specifies the rules that need to be followed in order for the ideal to be reached.

Both theories, the ideal and the nonideal, are indispensable aspects of a comprehensive theory of justice. Nonideal theory on its own lacks an objective, an aim. Nonideal theory takes its elements and the natural circumstances at their face value, without any idealization. This means that the conditions in which the theory emerges may be "unfavourable", i.e. there may be wars, natural disasters, extreme scarcity of goods, diseases, etc. It also means that the political will of the peoples may not be stable enough for everybody to comply. Nonideal theory can provide a proper answer to these "unhappy conditions" only when there is an ideal theory on hand. Responding to the concrete case, giving a concrete rule, presupposes the existence of some principles. These principles direct the order of rules and resolve their conflict.

The key component of Rawls' ideal theory is the concept of a well-ordered society with its conditions of internal well-orderedness or conditions for their foreign policies. In LP, a well-ordered society is called the peoples, and it is the world of satisfied peoples, which is the ultimate goal of Rawls' theory of global justice. If all that has been delineated thus far were conclusive, my next step would be to elaborate on the concept of peoples in order to explain the goal of ideal theory. Consequently, the principles that relate to this goal will be easier to understand. The transitional nonideal rules or guidelines for our world cannot be formulated before the ideal has been clearly stated.



## CHAPTER THREE

### THE PEOPLES

"All *peoples* have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

General Assembly Resolution 1514

"We *the peoples* of the United Nations determined:

- To save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- To reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- To establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- To promote social progress and better standards of life in larger freedom."

United Nations Charter, Preamble

"We *the People* of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

Constitution of the United States of America,  
Preamble

Rawls titled his last book *The Law of Peoples*, thereby using, instead of the familiar notions of the nation or the state, the concept of peoples. Rawls explains his choice as follows: "I first chose the name 'peoples' rather than 'nations' or 'states' because I wanted to conceive of peoples as having different features from those of states, since the idea of states, as traditionally conceived with their two powers of sovereignty (cf. §2.2), was unsuitable." (LP:v).<sup>32</sup> Hence, the key element of Rawls' ideal theory of global justice is the notion of peoples. The notion of 'peoples', in the way Rawls uses it, has been much criticized. The most common objection is that the notion of peoples does not differ substantially from that of the modern nation-state. Rather, the concept brings another terminological and conceptual confusion to already existent notions of nation, ethnicity, and state (cf. Pogge: 2008; cf. Pettit 2008; cf. Van Parijs 2002; cf. Gerhardt 2006).

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<sup>32</sup> In the essay "Fifty Years after Hiroshima" he gives a similar statement: "I sometimes use the term 'peoples' to mean the same as nations, especially when I want to contrast peoples with states and a states' apparatus" (CP: 565 ft.1)

In what follows, I will elaborate on the notion of 'peoples' from two different perspectives: political and legal on the one hand, and philosophical on the other. I will try to defend Rawls' terminological and conceptual choice in the face of the developments in international law provoked by actual political changes. My approach is justified because Rawls himself says that he is writing a book that is to guide changes in international law (LP: 3). This means that Rawls wants to formulate an ideal theory of global justice, which then may be approached through concrete rules of international law (for which the ideal theory would provide guidance). The rules of international law would then directly correspond to the non-ideal political challenges. The ideal theory is still logically prior to the nonideal, or to the concrete rules of international law, but the state of affairs it advocates is causally secondary. Both theories, the ideal and non-ideal one, operate together in one framework that needs to be kept in mind at all times.

The politico-historical framework Rawls is referring to is the world 50 years after the Second World War; even more so, LP is influenced by changes in the global political arena in the last quarter of the twentieth century, i.e. after the publishing of TJ. In TJ, Rawls still wrote about nations or states, whereas some 30 years later, he changed the terminology. The question of what provoked him to do so imposes itself. Careful examination of political events, followed by changes in international law, may lead us to a better understanding of Rawls' reasoning and consequently a better understanding of his theory as such. Rawls himself declares that LP should fit these basic changes and challenges of the new world order, and give them a suitable rationale (LP: 27).

I will start by discussing the legal and political notion of 'state' since this notion was, and still is, substantial for any theory of international law and politics. Thus, any philosophical theory that aspires to be seen as a guideline for international law needs to take it into account. At the same time, I will discuss the emergence of the concept of 'peoples' in the documents and the practice of international law, analyzing the causes and outcomes of this phenomenon. Finally, in the last part of the chapter, I will give a philosophical account for the concept of peoples by giving an ontologically - substantive definition of 'the peoples'. It should account for the normative aspect of the concept in the overall Rawlsian discussion. The results I hope to reach in this chapter are first conceptual clarity about what Rawls means by 'peoples', and second how, if at all, his peoples can be normative for modern political societies.

### 3.1 THE LAW AND THE POLITICS OF 'THE PEOPLES' – HISTORICAL ASPECT

The syntagma 'law of peoples' is a direct translation of the syntagma 'jus gentium', which was used in

Roman law to refer to two different kinds of legal relations. It was the law that regulated relations between independent states; therefore, it was a part of public law that foremost settled questions of war and peace. It was also the law that regulated life in Roman colonies and their relations to Romans, so it was a part of civil and private law since it dealt with the relations between individuals or social groups. Thereby the word “gens”, the people, from “jus gentium”, means either a sovereign state or a social union in the form of clan, tribe, race, nation(Kaser 1993: 1-19).

The meaning of the *jus gentium* in either of the two versions refers to some regulation of the relations beyond certain borders: either those of a clan, a union, or those of a sovereign state. Today, a law that goes beyond and across borders is called international law and is considered to be a successor of *jus gentium*. It consists of legal documents between sovereign states about war, peace and many other things, as well as of *transnational* agreements on trade, cultural affairs, etc. In English terminology this law beyond borders refers to ‘nations’ as their basic units (‘*international*’), while in German it refers to ‘people’ (‘*Volk*’ in ‘*Völkerrecht*’). It is a matter of common agreement that the basic unit of ‘international law’ is a sovereign state, which is still a sole legitimate legislator as well as the ultimate executor of this law. However, an individual, population, or people in the form of distinctive social unions, are ever more gaining their distinctive place within international law.

The year 1648 is usually taken for the birth of modern nation-states, when, following the Peace of Westphalia, the Thirty Years War ended and the rulers of the states in Europe gained autonomous power to decide upon religious and legal issues within their territories: *cuius regio eius religio* (whose realm, his religion) was the motto of the peace agreement. It was the great merit of the 1648 Peace of Westphalia to allow each sovereign to decide how to run the internal affairs of his country, assuming that the sovereign knew best the society’s values and how to maintain them. The whole idea of the Westphalia Peace was to prevent foreign intervention and to consolidate nation-states in their internal affairs, with the drawback that international law consequently mirrored the power politics among sovereign states.

Once seen as a significant step ahead, the Westphalia model did not suffice for the changed global environment of the twentieth century. Human rights movements, feminism, republicanism, environmentalism are just some of the many movements that evolved beyond nation-states. These movements saw the statist view on international relations as an obstacle for their goals. The Westphalian idea of sovereignty, which was based on the autonomy of the sovereign ruler, was not seen as protective enough of all citizens and therefore had to be changed. The “new” sovereignty rested on the autonomy of the people, i.e. the population or the citizens of a certain state. The

population was to decide how they were to be governed; they were granted the right to self-determination that replaced the concept of the ruler's autonomy. The change in thinking about sovereignty brought about discussions on the peoples and their right to self-determination. These persisted in parallel to the modern notion of state.

Montevideo Convention on Rights and Duties of States(1933) of the Organization of American States defined the modern notion of the state. In the text, a state is characterized by four criteria:

1. Permanent population;
2. Definite territory;
3. Government;
4. Capacity to enter into relations with other state.

The Convention presupposes that a population has the right to self-determination, on account of a common, unified culture. Hence, that population chooses its state, or rather the state is *de facto* created through an act of will of its population, i.e. its people. However, this is hardly the case. States evolve through history over centuries, and the citizens of today were born into that situation without any requirement of their formal consent. Historical events led to the emergence of some states through acts of violence, separating ethnic communities or drawing arbitrary boundaries. It has often been the case that states, as political institutions, decide who its members are and usually these are then considered being one nation. Members of a national community enjoy specific legal rights that are denied to aliens (Tomuschat 1999: 96-97). Therefore, theoretically speaking, the population should have the right to determine the way they are to be governed, while political practice shows that the opposite is the case - that people find themselves governed by the state they are born into.

State territory has been gained through history in different manners: occupation, prescription, cession, conquest, accretion, succession. In modern times, all the violent ways of gaining territory are strongly forbidden by international law. The only legitimate way of acquiring territory is by the explicit affirmation of the people that live in that territory, so it seems that again the concept of self-determination of peoples plays a role. However, political practice here also interprets the principle differently, and while the law in one case ruled for the redrawing of the existing borders (at the time of independence), e.g. in the case of decolonization, in other cases the borders stayed the same (as in the case of Yugoslavia or Czechoslovakia) (Tomuschat 1999: 101-110).

As far as the aspect of the government is concerned, one can state that there is no government at the birth of a state and that for its formation again the population plays a key role. However, political practice showed us many examples where the population is simply a component influenced and directed by the sovereign of the state, as in the case of the absolutist regimes.

The last component, the capacity of one state to enter into relations with the others depends on both the combination of the previous three components and therefore the inner-state capacity to practice its influence outwards, and on the recognition that state has from other states. The recognition of a state by the international community is the other side of the coin in the self-determination process. A state is usually recognized, or rather affirmed as independent, if its population is satisfied or at least respected and well-treated by its government. Yet again, practice gives us many examples where authoritarian regimes are perfectly capable of entering into relations with democracies, and where democracies accept these relations.

Thus population, territory, government and capacity for entering into relations are characteristics of a state that at first glance seem quite tangible. However, in order to answer the questions of why these four components are as they are, i.e. how they emerge and how they can change, in order for them to be operative, other concepts need to be explained in order to observe the conceptual relationship between “the state” and “the people”.

The institutional aspect of a state, i.e. the relation of its government to its people and its territory cannot be discussed in modern times as separate from the concept of self-determination. The concept also introduces the rhetoric of the peoples, hence it is here of a crucial importance.

A state's territorial settlements, as well as its possible institutional arrangements and foreign policy preferences, depend to a great extent on a common culture of the population. Hence a common culture is one of the traits that holds the people of one state together, i.e. constitutes the state.

Finally, since no state is “an isolated island” and especially not in the era of globalization, the influence a state is subjected to from other states has repercussions on its decisions. These influences affect not only its institutional arrangements but also its descriptive traits like population and territory. Therefore, in what follows I will give a concise elaboration on the concepts of self-determination, common culture and of cooperation.

### **3.1.1. THE CONCEPT OF SELF-DETERMINATION**

With the first republics in the eighteenth century, a state's decisions were no longer seen as an

expression of the ruler's will, but as the expression of the collective decision of its people through its government. The people freely choose governments and through its decisions people determine themselves. Consequently, self-determination has to do with a collective right of some group to govern themselves, which is said to be the basis of the democratic principle of law and politics. Two practical problems arise immediately from this concept of self-determination. The first is about the scope of the population referred to by the "self" part, or as Christian Tomuschat calls it, the *ratione personae* of self-determination (Tomuschat 1999: 254). The second problem is about the final outcome or the goal that is to be achieved through the self-determination, or its *ratione materiae* (Tomuschat 1999: 255). The two problems are interconnected. Depending on how widely or narrowly we define the scope of persons who are to be granted the right to self-determination, we are also to define their eligible claims, e.g. statehood, federal units, some sort of political autonomy. The other way around is also possible: if the ultimate goal of self-determination is seen exclusively as leading to independent statehood, then not all groups can be granted this right, since otherwise none of today's large states would exist. The fact that states are still the most powerful players on the global political scene should not be overlooked. They dominate decisions of international law and hence would not accept provisions that would endanger their existence, which means that either self-determination does not necessarily assume independent statehood, or the persons that are allowed to self-determine themselves are *a priori* co-nationals (as in the case of colonial peoples).

The first distinctive portion of the population that was explicitly given the right to self-determination was the population of former African colonies. Their territories, in Africa, were conquered in the sixteenth century by the great European powers and the population was placed under European rule. United Nations Resolution 1514 (1960) liberated those territories and explicitly gave to "the peoples" a right to self-determine their political systems: "All peoples have a right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic social and cultural development" (Res. 1514, Art.2)

What did this mean in practice? Colonial populations, following years of guardianship, did not have the human resources or the know-how-strategies to build their own institutions. Giving them independent statehood also assumed supporting them in making their institutions work. "The peoples" were still in the need of guidance, assistance and supervision - the difference being that this time the period of supervision was to be limited.

In addition, the awarded statehood did not necessarily follow ethnic or racial lines, but was determined along the borders that Europeans, i.e. the colonial powers, had set. This was again a political decision

since otherwise the newly independent states would have ended up in endless disputes or maybe even in a war. Hence, Resolution 1514 introduced the idea of peoples and insisted on its inalienable connection to the idea of self-determination as the counterpart to the non-interference or non-subjugation to foreign rule, but did not specify the characteristics of the people, or what kind of political autonomy self-determination implies.

Another population group, the Palestinians, in this case of the same ethnicity, was granted the right to self-determination not long after the Resolution 1514. When the British Government retreated from Palestine in 1948, Jewish settlers in the region quickly proclaimed the Jewish state of Israel. Palestinians did not have enough time to organize their future. After the Arab-Israeli war in June 1967, Israel occupied the Gaza Strip, the West Bank and East Jerusalem. The General Assembly of the United Nations recognized that the Palestinian “people” have the right to self-determination (Resolution 2535, from 1969); the European Council joined this recognition in 1980 (Tomuschat 1999: 247). This specific ethnicity however, is not being granted an independent statehood, but rather another form of political autonomy.

Hence, if by ‘peoples’ only a part of a population or a specific ethnicity of some already existent state is meant, like in the cases of Quebec, the Basque Country, the Kurds, etc., then self-determination does not necessarily mean granting them independent statehood.<sup>33</sup> This does not, however, mean that these ethnic groups or parts of a population would not have certain linguistic, cultural even political rights. On the contrary, the rights and needs of these groups need to be accounted for within the political system of the state in which they live. The system needs to allow them to self-determine themselves even without an independent statehood. Being under “foreign” rule does not mean that this rule needs to be despotic or disrespectful of the ‘peoples’ culture. An extreme example of having a different moral and cultural codex from that prescribed by the state is the lifestyle of some indigenous peoples. They still live in their traditional way and did not assimilate to the life of the state’s majority. How should both the indigenous people and the state deal with this? Resolution 54 (1994) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, reads: “Indigenous peoples have a right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”. This provision may be read as a call for a breakaway from the state in which the indigenous peoples currently live or it may be seen as a call for some form of internal political autonomy.

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<sup>33</sup> But can, as in the case of Kosovo.

Resolution 2625 (1970) says: “the people have a right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development”. It is not said that political status need be that of statehood. What is being determined through self-determination is their culture, their social and economic well-being. This can be done within a group, association, and ultimately within the state. ‘Peoples’ are thus active on all levels.

As far as existing states are concerned, or even those that are emerging, it has become a standard that the government needs to express the will of its people, or rather, that a people is to govern itself through government. In other words, there should not be a government that does not express the wish for the self-determination of its people, but it seems that there may be one government that expresses the wish for self-determination of a few peoples.

### **3.1.2. COMMON CULTURE**

It has been said that a group who has a right to self-determination has a distinct culture. The peoples who live in the same political society, i.e. state, necessarily need to share at least the same political culture: a traditional orientation of the people on how their living-together is to be organized. This institutional aspect of a culture depends a great deal on other aspects, including religion, historical and artistic achievements, social practices, etc. These are also termed “culture”. The concept of culture is probably as hard to clearly identify as the concept of peoples or self-determination.

Besides the institutional aspect of culture there may be two other aspects (Prott 1995: 93-107). Culture highlights human intellectual achievements in different fields: music, visual arts, performing arts, philosophy, etc. Culture may also mean two other things:

“The totality of knowledge and practices, both intellectual and material, of each of the particular groups of a society, and –at a certain level- of a society itself as a whole. From food to dress, from household techniques to industrial techniques, from forms of politeness to mass media, from work rhythm to learning of family rules, all practices, all invented and manufactured materials are concerned and constitute, in their relationships and their totality, ‘culture’.” (Prott 1995: 94).

The first is a definition of culture in its most elite, narrow form, and the second is a broad definition which embraces all of the traditions and practices of a specific group, explaining exactly what makes it a group.

All three notions of culture are represented in various documents of international law as the rights to culture, e.g. the UNESCO Declaration of the Principles of International Cultural Cooperation of 1966;



the Universal Declaration on the Rights of Peoples, adopted at Algiers in 1976; the Banjul Charter on Human and Peoples' Rights of 1981, etc. These documents all use the notion of peoples when talking about cultural rights. Lyndel Prott lists eleven cultural rights, six of which he defines as group rights (Prott 1995: 97):

1. The right to develop a culture (UNESCO Declaration, Art. 1 (2); Banjul Charter 22 (1); Algiers Declaration, Art. 13).
2. The right to respect cultural identity (Algiers Declaration Art. 2).
3. The right of minority peoples with respect to identity, traditions, language, and cultural heritage (Algiers Declaration Art. 19).
4. The right of a people to its own artistic, historical, and cultural wealth (Algiers Declaration, Art 14).
5. The right of a people not to have an alien culture imposed on it (Algiers Declaration, Art. 15).
6. The right to the equal enjoyment of the common heritage of mankind (Banjul Charter, Art. 22(2)).

The documents that emphasize these group cultural rights, however, do not distinguish institutional from the broad aspect of culture, and consequently also do not differentiate the usages of the notion of peoples in these two different contexts.

The emergence of the concept of peoples in the context of cultural rights politics refers to the fact that 'peoples' go beyond the aspect of independent statehood. Peoples may, and in most cases should be, accounted for politically, i.e. they should have their cultural and economic well-being secured by political institutions. The state is only a framework that needs to secure this and hence can accommodate different peoples. There is hardly any state in the world that is culturally (in the third sense of culture) uniform. In the age of globalization, culture is no longer the implicit characteristic of the sovereign nation state. Rather, one sovereign nation-state needs to accommodate different cultures, and can be proud of its multiculturalism. However, if multiculturalism is the characteristic of a nation-state then it clearly means that the population of nation-states consists of different peoples, unless by culture are meant the political traditions of a specific state, and hence one people, of perhaps many ethnicities, that shares it.

### **3.1.3. STATE COOPERATION**

In its early stages, from the sixteenth to the nineteenth century, international law was seen as being one of co-existence. During this period, countries were still working on consolidating their internal affairs – which resulted in the formation of the first republican states. Republics showed that the people were mature enough to self-determine the way they wanted to be governed and that they were also aware of

the existence of others in the community who happen to have needs and interests. Republics hence needed to protect and advance the well-being of their citizens, for whom they were directly responsible. An advance in well-being was hardly possible without connecting to other states. However, it was not until the twentieth century that some serious changes in the politics of balance-of-powers occurred.

It was the aftermath of the First World War that marked the beginning of the new era. The Versailles Peace Conference of 1919 not only put an end to the most devastating armed conflict until that time, but also paved the way for the establishment of the League of Nations, through which the states of the world sought “to promote international cooperation and to achieve international peace and security”. For the first time, a legal order was to be put into practice that did not rest solely on the classical doctrine of sovereign equality. Faith was put in cooperation of states in addressing challenges confronting humankind in general. Governments founded the International Labour Organization in order to promote the interests of the working class, improving its working and living conditions (Tomuschat 1999: 124).

It can be observed that, with the growing political self-determination of peoples domestically, more interest has been shown for the issues beyond state borders. Therefore, parallel to the self-determination process, which reached its full heights after World War II, the idea developed that states should cooperate with other states and peoples. The idea that no state can provide and achieve sustainable development on its own prompted states to seek help and provide it for others as well. And what had perhaps originated as self-interest, where help was provided in exactly the same amount in which it was received under the “tit-for-tat” principle, developed gradually into the unconditional<sup>34</sup> right of developing states to receive support, and consequently the duty of developed states to provide support (cf. § 3.2.3).

Resolution 2625 (XXV) of 1970, on the Friendly Relations among Peoples, says that states should cooperate with one another, irrespective of the differences in their political, economic and social systems. This duty is, according to Tomuschat (Tomuschat 1999: 261), derived from Article 1 (3) of the UN Charter, where international cooperation is presented as one of the purposes of the United Nations: “to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character.” and Article 56 of the same Charter, where member states oblige themselves to take joint and separate action in cooperation with the United Nations for the fulfilment of goals set by Article 55.<sup>35</sup>

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<sup>34</sup>Right to receive help, i.e. the duty to give it is unconditional in the case of human rights protection. It goes without saying that all other help is in some way conditional; that is, in other cases, some kind of reciprocal action is assumed.

<sup>35</sup>Article 55 of the UN Charter:

“With a view to the creation of conditions of stability and well-being which are necessary for peaceful and

When talking about cooperation, legal documents usually take the state and the people to be interchangeable concepts. Cooperation may be taken to mean bilateral or multilateral agreements for mutual advantage or it may be taken to mean aid programs to those less advantaged. In both cases, the state is judged to have the best infrastructure to effectively provide economic support. At the same time, when the stress is put on the cooperation among peoples, instead of between states, then the cooperation goes beyond the governmental aspect and also accounts for cases where the government is not a reliable partner for cooperation. In other words, it refers to direct cooperation or help, or direct inter-connectedness, between populations, i.e. civil society, no matter what kind of governmental structure is in place. A good example of this is support for opposition movements in countries going through, or preparing, political change.

If we were to summarize the mechanisms for mutual support there would be two kinds. First are the instruments that secure the preservation of peace and security: first and foremost the United Nations. Chapter VII of the UN Charter deals explicitly with breaches of and threats to the peace and acts of aggression. Article 39 of the Charter gives the Security Council the right to intervene for the sake of preserving peace; it makes room for so-called "just war". Second, when economic issues are at stake there are numerous instruments for offering economic support: through funds of the International Bank for Reconstruction and Development (or World Bank) or the International Monetary Fund (IMF) (Frank 1995: 413). The World Bank is responsible for poverty eradication and economic growth in poor and underdeveloped countries, while the IMF is responsible for a stable world economy through alleviating international debts and keeping exchange rates in equilibrium.

Although a duty of mutual support originated in legal texts at the same time as the right to self-determination, the two characteristics seem to contradict each other. Self-determination says not only that states, i.e. peoples, are to decide on the way their governments are to be organized but also that they are to be left to independently, i.e. without any foreign influence, decide upon their foreign policy. Here it seems that participation in any international organization assumes a certain amount of influence of others and acceptance of certain duties and obligations that are externally imposed: "...talking of a

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- friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:
- a. A higher standards of living, full employment, and conditions of economic and social progress and development;
  - b. Solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
  - c. Universal respect for and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

duty of cooperation, one would seem to suggest that States may be under a legal obligation to enter into binding legal commitments even against their will” (Tomuschat 1999: 261).

Therefore, there is an apparent discord between the duty to cooperate and consequently to support, and the right to self-determination. A political entity may be eligible for the right of self-determination, but at the same time be economically dependent on other entities. This kind of dependence is comparable with the political imperialism of the colonial period. During the colonial period, colonial countries did not have a political will of their own as they were governed by European states. Economic dependence uses economic means to practice political power and although an entity may officially be politically independent, it practically depends on big corporations or donations (loans) from other countries or international organizations donations. This is a clear case of misuse of the concept of cooperation. However, it speaks to the notion that no political entity, or social and cultural entity for that matter, can exist alone, isolated from everyone else. Today global cooperation is a necessity. The principles of cooperation developed out of self-interest but did not stay on the *modus vivendi* level. They endorsed the altruistic, moral component that binds not necessarily peoples organized as governments, but simply peoples to peoples.

### 3.1.4. CONCLUSION

The state is still the most powerful and influential player on the international political and legal scene. However, since the 1970s the state’s “reputation” has been seriously put into question by the entity called the peoples. International jurisprudence uses the concept of the peoples in three different ways:

First, the ‘peoples’ are seen as governments of sovereign states. In this sense, the ‘peoples’ means that the government is the legitimate representative<sup>36</sup> of its population and as such liable for making decisions on its behalf in matters of domestic and foreign policy<sup>37</sup>. This usage of the ‘peoples’ is to be found in many documents of national and international law (the Preamble of United States Constitution, quoted at the beginning of this chapter uses “the people” in this way). The idea is that peoples, as political institutions of the highest order, i.e. governments, forebear the possibility of coercion and intimidation of the population. In that sense, the proclaimed right to self-determination was supposed to be an instrument for equating the role of the government with that of the factual expression of the will of

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<sup>36</sup>The methods of legitimacy, e.g. majority rule, are not going to be discussed here. It is assumed that governments may be representative.

<sup>37</sup>Richard Falk writes: “On this view, it is the legitimacy of peoples, not transient and potentially dubious legitimacy of governments, that constitutes the purpose and rationale for the instruments protecting human rights and for the whole idea of international solidarity. That is, States in this sense are an artificial and derivative political reality as compared to peoples”. (Falk 1995: 25)

its population. This right has been mostly used as a legal and moral instrument to justify decolonization. The backdrop of this thinking is that in many cases governments and peoples are already taken to be synonyms and then it is the already existing political geography that is putting constraints or establishing conditions for the self-determination (cf. Falk 1995: 25).

David Makinson (cf. Makinson 1995: 69- 93) notices the ontological difference between the peoples and states, i.e. governments: peoples are a kind of collectivity, a group of human beings with certain qualitative distinctions, while state is a kind of governing and administrating apparatus. These are, according to Makinson, not identical even if the state (government) stands as the spokesmen or representative of the people (Makinson 1995: 75). The relationship is that of the municipal council and its constituency. However, I hope to show in the next section that there are ways to overcome this and ways to hold peoples and governments under certain conditions interchangeably liable to the same rights and duties.

The second usage of 'peoples' in international legal documents is in the context of a specific ethnicity within the state. Here the 'people' is seen as a challenger for the state's sovereignty. It is highly likely that the rights of peoples are being violated by the state, and therefore international law is set up to protect the peoples and their right to self-determination. An example for this can be found in the 1976 Algiers Declaration of the Rights of Peoples, which was drafted by a group of jurists acting as volunteers but addressing the grievances of the global society, such as the Turkish genocide of the Armenians, or Soviet military rule in Afghanistan, the U.S. intervention in Central America, etc.

Finally, peoples may also be seen as a synonym for a specific international regime as a whole, or as an emerging civil society that is fighting for the rights of groups and individuals everywhere. We talk about the peoples of the United Nations or the peoples that signed the Algiers Declaration. It is this distinctiveness of the peoples that needs to be respected and the goal of international law is to show that despite differences in culture and political regimes, united peoples can still achieve certain goals.

What I hope to have made clear in this chapter is that despite its frequent usage in international legal texts, the notion of peoples is far from obvious. However, this section indicated that something is wrong with the concept of the state as it has been traditionally used within the *realpolitik*, and that an alternative to the politics of state interests needs to be sought. In the following chapter, I will investigate whether philosophy can bring conceptual clarification into the concept of peoples.

### 3.2. THE IDEA OF PEOPLES IN RAWLS' "THE LAW OF PEOPLES"

As indicated at the beginning of this chapter, with the change of terminology Rawls declared that he wanted to distance himself from the practice and theory of international relations in the sense of *Realpolitik*. This means that he wants to distance himself from the politics of interest and personal gain. His entire life, Rawls was concerned with what is right, and his whole philosophical endeavour was to substantiate the primacy of right over that of a personal good. In that sense, international politics, for which Rawls' *Law of Peoples* created guidelines, does not differ from the domestic case: that which is reasonable, that which is right, for the others as well as for oneself, has primacy over rational personal interest, selfish personal good which does not care for the well-being of the others. International politics that prefer harmonious relations among the societies even if it means less wealth or power for a particular society is to have primacy over the one that advocates stability as a balance of powers, i.e. out of the *status quo*.

In constructing a theory of global justice Rawls uses "the peoples" as a starting unit. Rawls argues for midway between the realists, who advocate that states are the primary units for any conception of global justice, and cosmopolitans, or idealists, who argue that people are normative units since states *per se* do not have a normative status. It is important, therefore, to explain what Rawls means by 'peoples' and how this concept fits his overall scheme.

The thesis I advocate here is that the peoples are an ideal concept, which as such pertains to the descriptive ideal theory, and is to be understood as a guideline for current, existing political societies. The appearance of the notion of peoples in international law indicates that the concept should play a practical role as well. This chapter will indicate how.

#### *Ontology of the Peoples*

When talking about state-like political entities Rawls uses three different expressions: "states", "peoples" and "societies".<sup>38</sup> "States" he directly connects to the realist way of doing international relations; in Rawls' work, states have negative connotations<sup>39</sup>. "Society" is a more neutral expression. Any kind of political or social order can be referred to as society. Rawls writes about the five types of

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<sup>38</sup>Rarely does he use "country" or "nation"; country is used when he talks about society from the point of view of its boundaries, i.e. its geographical aspect, while nation is used when cultural aspects (LP: 25), i.e. religious, moral, political traditions are discussed. "Community" is used only to refer to non-liberal comprehensive societies that function as associations.

<sup>39</sup>Even in *A Theory of Justice* or *Political Liberalism*, where Rawls deals with the conditions for a just domestic society, which politically constitutes a state he hardly ever uses the expression "state."

domestic societies: liberal democracies, decent hierarchical regimes, burdened societies, outlaw states and benevolent absolutisms. Hence, “society” although it refers to political order is not connected to any specific political regime. When society is politically well-ordered then it becomes “people”. Society can therefore be understood as *genus* for ‘peoples’, while the conditions of well-orderedness as *differentia specifica*.<sup>40</sup> What is needed is an ontological examination of ‘society’ and then clarification on the conditions of well-orderedness.

Society consists of a group of natural persons. However, not just any group of natural persons forms a society. Society is a kind of group that is able to act as a singular agent on certain issues. This means, and here I follow Philip Pettit’s definition of group agents, a society must fulfil three conditions: First, there must be a common goal or set of goals which are of the group’s interest, and which are identified over time by pre-set procedures. Second, a group must endorse a common body of judgments about those issues that arise during the course of pursuing its goals. Third, a group must form its goals and judgments in a more or less rational manner and act rationally so as to satisfy those goals. According to Pettit, if the three conditions are satisfied a group can be said to simulate individual agents in the most minimal way (Pettit 2006). In order to better explain the concept of a joint action, Margaret Gilbert gives us an example of two people walking together. When do we say that two people are walking together? When they are each committed to walk with the other, for whatever reason, and express that commitment in performing the actions that lead to that walk. Similarly, a socio-political society is a “joint walk” of individuals who are sharing the same goal of developing just institutions in the face of some common agreement about what that “walk”, a.k.a. institutions, should look like.

Societies of a different kind may also exist, i.e. depending on the group’s goals or the purpose of unification of natural persons, such as religious societies, academic societies, sports societies, etc. Purposes specify the domains that the natural persons who form that group are interested in. Rawls is interested in a special kind of society—that of the socio-political variety. The goal Rawls assigns to natural persons committed to forming a political society is that of forming just social and political institutions. These goals allow for many other goals, e.g. forming religious, cultural and educational institutions, as long as they do not directly conflict with the goal of forming just institutions.<sup>41</sup> Rawls refers to political society as a social union of social unions (TJ: §79).

The socio- political type of society Rawls is interested in is also limited in scope. It is a matter of social institutions that are active over a specific bounded territory. The commitment of agents to common

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<sup>41</sup> A political society may include various religious societies or educational societies as long as these do not infringe on the negative freedoms of the members of their own and other societies within the socio-political unit.

socio-political institutions depends on the comprehensiveness of the common goals. The absolute minimum is for members of a society to share the same political goals.

Hence, the elements of a society as a collective socio-political entity are: natural persons, their territory, common political goals and a common set of judgments that help formulate and fulfil these goals. Depending on the relation of these three elements, societies are said to be well-ordered or not well-ordered. If political, i.e. common goals are a part of individual goals and these are directly pursued by an institutionalized body of government, and indirectly supported by other natural persons, as in elections, then we have a case of a well-ordered society<sup>42</sup>. If the political goals are autocratically pushed by some number of natural persons and forced on the entire territory, the society is said not to be well-ordered. In the second case, “joint walk” is forced upon a certain number of natural persons. When a direct relation between institutional outputs exists (in terms of achieving a common goal and individual support of that same goal), the society in question is what Rawls terms ‘the people’; I will be referring to this as the People.<sup>43</sup>

#### *Structure of Peoples or Conditions of Well-Orderedness*

Philip Pettit introduces three options on how individuals can be organized into a collective agent that models the individual agent. In other words, depending on the relationship between the individual persons who share a certain territory and the extensiveness of their common goals, the society may be: comprehensive, or solidaristic<sup>44</sup>; individualistic or singularistic; and that of civicity (Pettit 2005). Pettit thinks that all three models are capable of joint action but not all are to be referred to as the Peoples. The first type of society, political solidarism, Pettit explains as that in which the government, acting on behalf of the collective group, actually expresses some canonical judgments. Society and its representatives will act according to a set of judgments and purposes that are not necessarily to the highest personal advantage. Society is seen as a “corporate persona” (Pettit 2005). Any autocratic regime is this kind of society. It embodies a stronger or weaker communitarian ideal: natural persons who constitute the political society are establishing a single system of belief and desire.

Under the singularist alternative, there are no particular relationships that individuals in the same political society have to have with one another. While it is possible that individuals will have entered into various contractual relationships with one another, or even with government authorities, it is not

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<sup>42</sup> Of course taking into account basic reason, meaning that a society of sadists and masochists would not be considered well-ordered although the natural persons who form it may be satisfied with the common goals.

<sup>43</sup> I will therefore refer to “the People” when I mean political institution, idealized version of the state; and to “the people” when I refer to the portion of the population with the distinguished culture. Rawls does not make this distinction, except when referring to the Society of *Peoples*, where it is clear that capitals are used to refer to independent political societies.

<sup>44</sup> Pettit’s “solidarism” should not be confused with “solidarity”, which will be referred to herein § 6.



essential that they do so. Belonging to the same political society requires that people relate to one another in just about any fashion, “they may be as heterogeneous and disconnected as the set of individuals who live worldwide at the same latitude” (Pettit 2005: 162). Population is a mere aggregate of separate subjects. This is a libertarian view of political society advocated by Robert Nozick, for example. This kind of society may still, as Pettit says, act as a collective agent but only under a certain minimal number of joint actions, e.g. on the issues of the protection of everyone’s human rights. Furthermore, Pettit explains that the government in this second case would be analogous to the board of a public company. Shareholders in a public company may have many common purposes, but they hand over the responsibility for pursuing those purposes to the company board or management. The population, i.e. “shareholders” appoints those representatives and may fire them if they do not do their work well in terms of “maximizing the profit” of “shareholders”. The third alternative is halfway between government being an “opinion-building-agency” and government being a “shareholder”. Pettit calls this third alternative “civcity”. He writes:

“Suppose that while the individuals involved in a grouping have certain purposes in common, and have a representative agency in place to advance those purposes, they are unwilling in the manner of the represented aggregate to leave the judgments as to the interpretation and implementation of the purposes entirely in the hands of their representatives. They debate among themselves, in smaller or larger gatherings, about what exactly the purposes are, about what they require in this or that respect, about how they can be best served under such and such circumstances, and so on. They will not be able to agree on those questions, of course, and to require the representatives to take heed of the agreements reached; if they did, they would constitute a group agent. But they still expect the representatives to take their guidance from that public deliberation and debate, and they hold them to that expectation; the representatives can expect to be challenged and perhaps dismissed if they do not meet it. But what can it mean for representatives to take their guidance from a public debate that does not reach agreement on specific judgments? If members debate about common purposes and how to serve them, they will inevitably have to give one another reasons for the different lines they support. Some of those considerations will not pass general muster; they will be dismissed as sectional or self-serving or clearly false. But, short of the debate going straight to the ground, many will command general acceptance. They will emerge as considerations that are treated on all sides as relevant to interpreting and implementing the common purposes of the group, even if they are not weighted in the same way by all. These considerations will constitute presumptions and valuations shared within the group and they will generate a natural constraint on how the representatives are to form their judgments and decisions. The representatives will be held to the expectation that their judgments and decisions should be justifiable on the basis of those presumptions and valuations. Alternatively, if the presumptions and valuations are not determinate enough to support any particular set, the representatives will be held to the expectation that the judgments and decisions should be made under procedures that are supported by the presumptions and valuations.” (Pettit 2005: 2)

Members of such a society will debate about the goals they happen to share and that make them into a society in the first place. But unlike communitarian societies, they will not aim at establishing a body of common judgments on which to act. Unlike both the communitarian and aggregate societies, civility's government is constrained in its actions through public debate.

Pettit thinks that Rawls' Peoples, both liberal and non-liberal, have a formal structure of "civility". They act as a collective agent with the representative government. Their citizens share some common goals and values which are *per se* too few for a strong communitarian community and again too much for a libertarian society. The bulk of shared values and goals are debatable and heuristic, in each moment it is an expression of how natural persons who form a collective agent of society think and feel about that society and its purposes.

Thus, the conditions of well-orderedness are denoted by the way governments express the will of all the natural persons living in their territory. In the case of liberal societies the domain of purposes is narrower: it concerns only political topics. In the case of decent non-liberal societies the domain is more comprehensive but still not dogmatic, i.e. open for critique and revision. According to Rawls, a group agent is considered well-ordered if it fulfils three conditions:

"Now to say that the political society is well-ordered conveys three things: First, and implied by the idea of public conception of justice, it is a society in which everyone accepts, and knows that everyone else accepts, the very same political conception of justice (and so the same principles of political justice). Moreover, this knowledge is mutually recognized: that is people know everything they would know if their acceptance of those principles were a matter of public agreement. Second, and implied by the idea of effective regulation by the public conception of justice, society's basic structure - that is, its main political and social institutions and the way they hang together as one system of cooperation - is publically known, or with good reason believed, to satisfy those principles of justice. Third, and also implied by the idea of effective regulation, citizens have a normally effective sense of justice, that is, one that enables them to understand and apply the publically recognized principles of justice, and for the most part to act accordingly as their position in society, with its duties and obligations, requires. In a well-ordered society, then, the public conception of justice provides a mutually recognized point of view from which citizens can adjudicate their claims of political right on their institutions or against one another" (JF: 8-9).

The idea of a well-ordered society does not refer to the liberal society *per se*. Rawls defines well-ordered society as the one that is effectively regulated by the public conception of justice, and is a counterpart to the idea of a fair system of cooperation. And although Rawls stresses in the first section that he is referring to the political i.e. liberal justice, the whole passage can be read as applying to more comprehensive conceptions of justice as well. It is this broad definition of well-ordered societies that accounts for notion of the Peoples.

### *Substantial Characteristics of the Peoples*

I have established thus far that Rawls' Peoples consist of natural persons who may act as group agents; they are, however, not a pure aggregate of natural persons with the minimal capacity of a group agency, nor are they narrowly connected associations where common goals are always seen as a priority. They are structurally between aggregate and collective agents. Peoples have governments that are representative in a specific way: they represent a common goal but are constantly sensitive to the public debate and to voices about individual success or failure. Depending on the common goals and purposes as well as their value systems, Peoples may be liberal or decent, but in any case well-ordered. Before I go into a detailed explication of what 'liberal' or 'decent' denotes, I will first explain some of the substantive characteristics Rawls assigns to Peoples, and in doing so differentiates them from what has usually been referred to as the states.

Rawls substantially defines Peoples by assigning them three, and negating them two, of the characteristics of traditionally conceived states. These characteristics pertain to the bulk of our "common judgments" and pre-conditions of reasonableness.

Peoples do not have two powers typically assigned to traditional sovereignty: the right to go to war in the pursuit of state policies and the right to autonomously deal with its own people as they please (LP: 26). This reformulation of sovereignty does not mean that the legitimate government loses its authority to enforce the rule of law; it merely forbids private violence and abuses of the rule of law domestically and internationally. This condition has been backed, or rather justified, by factual restrictions in international law since World War II (WWII). After WWII, the doctrine of human rights protection emerged and put constraints on the doctrine of unbounded sovereignty. In Rawls' Peoples, the concept of sovereignty is connected to that of the population, or the people, rather than to that of government or a ruler. Rawls stresses the importance of the people's self-determination. This means that the government in Rawls' ideal theory is effectively under the control of its people: it expresses the will of the people in such a manner that the people govern themselves.

In concordance with the changed thinking about sovereignty there are three further characteristics that Rawls applies to the Peoples: institutional, cultural and moral. Real world states as we know them do not necessarily have all three. When fulfilled they are the necessary and sufficient characteristics for a political society to be called the Peoples.

Institutionally speaking, a People has a liberal or decent government as their institutional arrangement. These institutional arrangements mirror the conceptions of justice these societies advocate. Specific government structures will be elaborated in more detail in the sections to come.

Furthermore, a Peoples' population shares a common culture, which is either a crossover of many different reasonable cultures that are all given enough space to flourish under the political system, or it may be that it is the culture of one specific reasonable comprehensive doctrine. A population of the Peoples hence develops a healthy patriotism that occurs when the population shares common sympathies<sup>45</sup>. It is not an exaggeration to assert that through this cultural condition Rawls is applying to the idealized version of nationality (Tan 2006: 79). According to David Miller, a nation emerges from an ethnic community. Ethnicity continues to be a possible source of new national identities. A nation consists of communities of mutual recognition and mutual commitment; they are usually, but not necessarily, historic communities which stretch back and forth through generations and as such are sources of obligation; a nation as a community is a source of active identity; it needs a geographical place; finally people have something in common 'national character' or common public culture (Miller 1995). Where ethnicity finds its aspirations denied it begins to think of itself as a nation. Hence Rawls' Peoples would accommodate many ethnicities that would share a common public culture and see themselves as one nation. All the ethnicities would consider themselves free, satisfied self-determined.

Finally, Peoples have moral nature, which means they express a firm attachment to a political (moral) conception of right and justice. These are taken to be liberal or decent, hence reasonable.<sup>46</sup> This third characteristic is the greatest novelty: the moral nature of the Peoples makes them act reasonably and not just rationally, and they do so out of the conception of justice they adopt. The reasonable behaviour is inherent in each Peoples' conception of justice and means that the party acting reasonably is taking the interests of others into account instead of acting on purely rational grounds.<sup>47</sup> Parties have ability to rethink and revise their conceptions if they collide with those of others. They are either already moral agents, tolerant and self-constrained, or have a capacity for moral learning, which means open for

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<sup>45</sup>This notion of peoples having a distinct cultural character has been criticized by Kok-Chor Tan, who argues that unified cultural character is a vague idealization and is not to be found in the current world, thus Rawls' project is utopian. See: Kok-Chor Tan 2006.

<sup>46</sup> Reasonable according to Rawls means the following:

"Persons are reasonable in one basic aspect when, among equals say, they are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so. Those norms they view as reasonable for everyone to accept and therefore as justifiable to them; and they are ready to discuss the fair terms that others propose" (PL: 49).

<sup>47</sup> Rawls explains that the rational is an idea that applies to a single unified agent with the powers of judgment and deliberation in seeking ends and interests peculiarly its own:

"The rational applies to how these ends and interests are adopted and affirmed, as well as to how they are given priority. It also applies to the choice of means, in which case it is guided by such familiar principles as: to adopt the most effective means to ends, or to select the more probable alternative, other things equal" (PL: 50).

He adds that rational agents lack the particular form of moral sensibility that underlines the desire to engage in fair cooperation as such; their approach is psychopathic because their interest is solely in their own benefits (PL: 51).

consultation and cooperation. Moral nature of the Peoples develops gradually and parallels the maturing of the political system.

Cooperation between societies may have started out of each society's self-interest or urge for rational gain. The more the political systems of societies accounted for the sense of justice of its members the more prone they became to acting morally in international relations (cf. § 2.2.1.) People learn the values of dialogue, reflection and tolerance internally and apply it in foreign relations. They build cooperative agencies between societies. If these prove to be successful for all involved, societies grow attached to them and to the moral value of cooperation. They develop an affinity towards each other in tandem. The final outcome being that cooperation is accepted as a part of each society's political culture, or rather its moral nature.

Rawls writes: "The term "peoples", then, is meant to emphasize these singular features of peoples as distinct from states, as traditionally conceived, and to highlight their moral character and the reasonably just, or decent, nature of their regimes." (LP: 27)

The problem with ascribing certain substantive, especially moral, characteristics to the Peoples lies in the character of these characteristics, that is in those that parallel the psychology of individual agents. However, if the reasoning about the possibility of a joint action or group agents that I have presented here is conclusive, then I see no problem in taking the peoples to model some of the psychological traits of persons.

Furthermore as Christine Chwaszcza notices, in her book *Moral Responsibility and Global Justice* (2008), Rawls' theory does not give up on ethical individualism or, as cosmopolitans call it, normative individualism. Ethical individualism is to be understood as a meta-ethical principle which postulates that political and legal institutions and practices are legitimate only to the extent which they can be considered to be justifiable from the perspective of the individuals who constitute them or are affected by them (Chwaszcza 2008: §1.3.). Following this line of reasoning, it is also justifiable to ascribe mental and psychological attributes to the peoples and wait for the individuals that comprise them to approve it.

As already indicated, Rawls, in his work on international justice, mentions five types of societies: reasonable liberal peoples, decent peoples, outlaw states, societies burdened by unfavourable conditions and benevolent absolutisms (LP: 4). Only two are of our interest since only two are referred to as Peoples. On the one hand, peoples are liberal democracies as we know them from PL. On the other, by peoples it is meant *decent* peoples, which he also calls "decent consultation hierarchies" as exemplified by imaginary Kazanistan.

In what follows, I will explain, in more detail, the political structure, and from it the expected political

behaviour, of liberal and decent peoples. The categories through which I will analyze the Peoples are those that proved important for the analysis of states. Through these categories the notion of peoples were introduced into international law. Hence, I will address the institutional and cultural character of peoples as well as their capacity for mutual support and assistance.

### 3.2.1. LIBERAL PEOPLES

Liberal people are a group or a collective agent. They act as one without neglecting the interest of individuals that form the collectivity. Individuals participate actively in the decisions of the collectivity. Institutionally speaking these Peoples are liberal democracies, organized around a political conception of justice as a “free-standing view”,<sup>48</sup> specified (ideally) by the two Rawlsian principles of justice. Representatives of the individuals, in the original position, chose the two principles among many other options. The conception of justice is that political, comprehensive doctrines play a role only in non-political spheres. The political conception of justice is an overlap between many different comprehensive doctrines. Only those issues that fall under the domain of “the political” are to be considered in public debates. Liberal democracies are explained in great detail in TJ, PL and JF. Here, liberal Peoples’ internal affairs are to be elaborated only as far as it is necessary to understand their foreign policies.

#### *Institutional Aspect*

I start with analyzing the institutional consequences that the adoption of Rawls’ conception of justice would have. The first principle of Rawlsian justice is advocating the fair value of equal liberty, while the second stresses the importance of equality of opportunity and distributive economic justice for those who are the least advantaged. Furthermore, principles give priority to the protection of basic rights and liberties over the equality of opportunity and economic equality. Hence, these three components of justice as fairness, together with their lexicographic priority need to be provided for institutionally in order for the society to be, in political practice as well, considered a well-ordered liberal society.

As a result, liberal Peoples have reasonably just democratic government. This again means that the government must effectively be under the political and electoral control of its people. The laws of a well-ordered liberal society are decided by majority rule by representatives who are elected by citizens with equal rights to vote, hold office and express their political views. However, Rawls is aware of the

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<sup>48</sup>The idea of “free-standing-view” is the way a political conception of justice has been presented: it does not derive its justification from any comprehensive doctrine; a political conception of justice is connected solely to the basic structure and can be presented without presenting any specific comprehensive doctrine, which all, as long as they are reasonable, exist along the political conception spectrum. Political conception is represented as a free-standing-view, i.e. free from any specific comprehensive doctrine.

problems that may arise from majority rule and in his version of liberal democracy majority rule is constrained by written constitution with a bill of rights; separation of powers; bicameral legislation; a judicial review process and the practice of public reason. Finally, a democratic society suggests a social and economic system where productive assets are widely dispersed and controlled by the people, economic entrepreneurship is largely free except when needed to maintain all citizens' minimal economic power. Citizens are economically independent; they are not subservient to any person for their economic well-being. In practice, this kind of pre-condition satisfies an economic system of what Rawls calls "property-owning democracy" (cf. JF:135-136 ; cf. § 2.1.2.). This system mitigates against the cleavage between rich and poor getting too deep and insuring that neither the majority nor the minority of any class can misuse its position on account of the other class.

Furthermore, Rawls argues for a constitutional, rather than majority democracy. His well-ordered society requires democratic government with restricted majority rule. This written or unwritten constitution corresponds to the principles of justice. The American model of it, a written constitution, is explicitly a legal body of its people: the people wrote it for the people. As Samuel Freeman stresses, it deems "the People" sovereign and "the People" has ultimate political authority. The People, or their constitutional representatives, make and amend the constitution and thereby set up (democratic) government as an agent for the people with the responsibility to make and enforce laws that promote, on one hand the common good of citizens, on the other the good of each citizen. Government must not make decisions swayed by the private economic and corporate interests.

The separation of powers into legislative, executive and judicial branches, as well as bicameral legislation and the practice of public reason are all measures put in place to prevent the tyranny of the majority and undisturbed practice of the conception of justice. Rawls encourages public discussion and serious legislative deliberation regarding all aspects of issues. Public deliberation is important to insure that basic rights are not infringed upon, that all sides are heard and that legislators take into account the effects of proposed legislation upon the fundamental interests of minorities. Public and legislative deliberation is of fundamental interest to minorities. It is also of fundamental importance to the discernment and achievement of the public interest and the common good of all citizens (cf. Freeman 2006).

These are direct suggestions that Rawls makes on how his principles should be put into political practice, or rather how the political reality of one well-ordered society would look like. The main aspect being that in all political institutions the people's (population's) interests must coincide with that of the institution.

Rawls' conception of justice is by no means instrumental. It does not serve the individuals to satisfy their egoistic wants and it does not serve the societies to achieve solely their rational aims. Rawlsian justice is about the specific idea of a common good: about right reasons for achieving satisfaction, stability, prosperity and peace or about the preconditions and conditions for cooperation of equal parties. Hence, the whole idea is that there is no hierarchy among parties but an equality of conditions for achieving individual good (Cohen 2003: 97).

The primary aim of liberal democracy is therefore to promote a common good, not individual happiness and individual freedom. "Government is assumed to aim at the common good, that is at maintaining conditions and achieving objectives that are similarly to everyone's advantage" (TJ: 233) In other words, the primary aim of liberal democracy is to promote justice, and the primary role of just institutions is to provide the conditions for realizing this ideal of citizens as free, equal and independent. Of course, each citizen is concerned that his/her happiness not be undermined and that laws generally prove favourable to his/her pursuit of good. Given that citizens have a sense of justice, they normally want to pursue their personal aim in a way that is consistent with just institutions and the common good of justice (cf. Freeman 2006) that should be founded on some kind of common culture.

#### *Cultural Aspect*

The people of liberal democracies are supposed to have "common sympathies" for each other. "Common sympathies" is a phrase coined by John Stuart Mill and used by him to explain the phenomenon of nationality. Nationality, according to Mill, may have different causes: identity of race, community of language, community of religion, geographical limits, political culture, national history, and connected to all of these, collective pride and humiliation, pleasure and regret (LP: 23f17). Mill's definition of nationality and common sympathies is comprehensive and is not the way the concept is commonly defined by contemporary liberals. So-called liberal nationalists like Yael Tamir and Will Kymlicka define culture as the dependency of common institutions and practices. Kymlicka calls liberal cultures "societal culture" (Kymlicka 1998: §5). They are multi-ethnic societies. The ethnicities share the same institutions and develop attachments and patriotic feelings towards them. David Miller, in his influential book *On Nationality* (1995), explicitly affirms that many different ethnicities and races may form the same nation, e.g. United States of America. In affirming that, Miller, and other liberal nationalists, affirm a specific definition of cultural attachments than to the political institutions and history and traditions created through them. This concept of culture is compatible with broader concepts of specific ethnic cultural characteristics.

Rawls basically agrees with liberal nationalists and uses Mill's expression not in its comprehensive



meaning but rather as a leitmotif to affirm the necessity of unity of the political entity. As far as liberal societies are concerned, Rawls admits that the common traditions and histories may merely be in progress. Citizens may develop sympathies and trust through participation in, and dependence on, common institutions that function well and make the peoples feel satisfied. Hence, it may be that those “sympathies” need to be developed during the due course of building a political system. This again means that there may not be just one culture in the liberal society; there may be many. In that case, co-citizens are to respect one another’s culture *equally* and they are all to work together in support of a mutual political system that allows each to practice its culture. Political principles for reasonably just constitutional regimes allow us to deal with a great variety of cultures and to include them all in one political regime. Hence, government is the political expression of its people, who do not necessarily coincide with one nationality or one culture. One government should account for all different cultures, and it is the commonality in political issues that make the people into one People.

Every person in Rawls’ society would have freedom of expression granted; everyone would be granted the right to education; parents would have a right to choose the kind of education given to their children; every person would have a right to participate in the cultural life of the community; every person would have a right to protect his/her artistic, literary and scientific works and the right to develop his/her artistic potential; everyone would be granted the right to respect cultural identity; minority peoples would be given the right to respect for identity, traditions, language, and cultural heritage; everyone would be protected from an alien culture being imposed on them; and finally, everyone would be given a chance to equally enjoy the common heritage of mankind (cf. § 3.1.2). In creating the intuitions that would accomplish all of that, Rawls is creating a society with the specific political culture of tolerance and multi-culturalness, and that is a true cultural achievement.

### *Moral Aspect*

The moral character of the People has its roots in the moral character of its citizens. Citizens treat each other reasonably, meaning with respect for each individual’s rational interests that may differ greatly from person to person. The same reasonable conduct is expected from Peoples when they enter the international arena, since the fact of reasonable pluralism within domestic society parallels diversity among citizens of the same People. If reasonable, liberal democracy copes well with the cultural diversity within its borders, it should then have even fewer problems accepting it internationally and cooperating with those that are reasonably different.

Reasonable liberal democracies offer fair terms of cooperation to other reasonable societies that may be liberal or decent. Liberal decent Peoples will honour these terms of fair cooperation when assured

that other Peoples will do so as well. This moral nature is shaped by both the internal policies of liberal democracies and by the behaviour of other societies. International custom or law that then presses for changes in internal politics may condition “Moral learning”. However, liberal democracies *per se* act reasonably. To act otherwise would mean to undermine the values of liberalism. Behaviour of liberal democracies in the international realm is therefore to be derived from the values they cherish in domestic justice.

I conclude with what is said to be the fundamental interest of liberal Peoples. By fundamental interest, Rawls means that liberal Peoples want to protect their reasonable conception of justice. It secures the well-being of its people. The key value thereby is respect for the difference. This value will then be seen as the cornerstone for foreign policy, as well: the respect liberal Peoples will seek from others will be returned by respecting the others, who may have different, but still reasonable political structures.

### **3.2.2. DECENT HIERARCHICAL PEOPLES**

Decent hierarchical Peoples, on the other hand, are not liberal. Their internal structure was not modified through the first original position. However, they can still act as a unified agent. Further, they are entitled to be called the Peoples. Their legal and cultural systems are shaped around a certain comprehensive, mostly religious, doctrine which they all believe in and which delineates the idea of a common good. This “common good” is thus not dogma, it is not tyrannically insisted on. The basic structure of these societies has “decent consultation hierarchy” at its base that means that the population, the Peoples, are consulted on all major decisions of the government.

#### *Institutional Aspect*

Decent hierarchical societies must not necessarily have a written constitution or legal documents. However, they must have a system of laws that imposes moral duties and obligations on all persons living under the territory in question. These duties and obligations must be seen as fitting in with the common idea of justice and are not mere commands by force. The system of laws presupposes a decent scheme of political and social cooperation, i.e. nothing like a slave economy.

In order to closely depict the institutional scheme of a decent hierarchical society, Rawls presents us with the imaginary Peoples: Kazanistan, an idealized Islamic people. Its system of laws does not separate church from the state. As Islam is the favoured religion, only Muslims can hold public offices. Other religions are tolerated and may be practiced without fear. These other religions are encouraged to have a flourishing cultural life and to take part in a civic culture of the wider society (LP: 76).<sup>49</sup> The

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<sup>49</sup> This is the fundamental difference between liberal and hierarchical societies. In a liberal society, all offices are open to all

political body that makes the final decisions - the rulers of a decent hierarchical society - are to weigh the views and claims of each of the consulted groups and, in that way, to consult the opinion of the whole people. The basic structure of Kazanistan constitutes assemblies where the bodies can meet. Here, representatives can raise their objections or agree to government policies. This is how Rawls envisions the institutional embodiment of the reasonable comprehensive political constitution.

Thus, societies like Kazanistan are also entitled to be called the People. It is an idealized, non-liberal, caste-like society. This kind of society practices the idea similar to the one of public reason; however, here it is called *consultation* - the members of groups discuss their common aims. Individuals are allowed, in this process, to oppose to or to dissent from official opinion. Judges and other officials must address the objections. The dissenters are not to be dismissed as simply incompetent. In this way the common good conception of justice, i.e. the comprehensive doctrine of a decent society may change or be reformulated over time (LP: 61). Population is capable of moral learning while the comprehensive doctrines are apt to change. The main point here is that though not completely free and equal, individuals in the hierarchical societies are capable of self-determination that makes them into People.

#### *Cultural Aspect*

The concept of common culture is much more extensive in the case of non-liberal societies. People are connected not only through common institutional practices but also by common religion and values in private life. Public and private spheres overlap. Members of these societies are viewed in public life not as individuals but as members of groups. Rawls calls this feature *associationist*. The person is not viewed as free and equal as is the case in a liberal society; rather, he/she is viewed as a reasonable and cooperating member of its respective group (LP: 66). Everyone acts in accordance with the role he/she plays in the respective group, and in such a way duties and obligations that are to be derived from the common legal system are to be understood. Each group should be further represented in a hierarchical legal and value system of society.

Common culture or "common sympathies," i.e. identity of race, community of language, community of religion, geographical limits, political culture, national history, and connected to all of these, collective pride and humiliation, pleasure and regret, are in decent societies more comprehensive and less dependent on politics than they are in liberal societies. This does not mean that tolerance towards multiculturalism is not present; just that diversity in cultures is simply not present in the same amount as it is in liberal societies.

#### *Moral Aspect*

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citizens, no matter what religion one adopts.

Decent hierarchical societies also have moral nature analogous to that of reasonable liberal societies. Decency and reasonableness are two counterpart normative ideas. Thus, decent societies honour the laws of peace; they respect human rights internally and conduct their foreign policy in such a manner as to respect human rights of the people around the world. These are the rights that cannot be said to be particularly liberal or specific to Western traditions: the right to life (to the means of subsistence and security); to liberty (freedom from slavery, serfdom and forced occupation, and freedom of conscience); to property (personal property); to formal equality (similar cases are to be treated similarly) (LP: 65). Their people respect rights and duties that are in concordance with the common, comprehensive conception of justice. Decent hierarchical society is not aggressive. It engages in war only in self-defence. It gains its goal through diplomacy and trade (LP: 64).

Decent hierarchical Peoples also have a sense of self respect; their ultimate aim is to internally institutionalize their common conception of justice and in that way secure the good for each individual. In their foreign policy they wish protection and respect for their internal affairs. Although they do not treat all of their members equally, hierarchical Peoples wish to be treated equally on a global plane. The equality urged here is not analogous to the internal equality of subjects as in democratic system, but rather of the internal equality of the leaders of different groups of the same hierarchy. International relations with its institutions can be perceived in this way as well.

Now the members of decent societies have also achieved the final stage of moral learning, however their thinking in principles cut differently--it is more comprehensive. There are also objective grounds for that: cultural diversity of members of society is not extensive, it just happens that the majority of the population shares the conformity to the same comprehensive ideal. This is not a problem as long as these provide for a good life and do not suffocate critical thinking.

Since the key virtue of these political systems is comradeship and mutuality, there is no reason for these societies not to conduct their foreign policy in this way and to think that this is the way it should be.

### **3.2.3. SOCIETY OF PEOPLES**

A Society of Peoples has decent Peoples for its members. The Society is formed through an extension of the idea of social contract to the world at large; however, the units of the contract are representatives of the Peoples. Respecting the condition of equality among the contracting parties, the constructivist method has been deployed separately twice: for liberal and for decent Peoples. They are all supposed to affirm the same principles for Society. Principles for the Society are to be in concordance with the

aims and goals the Peoples set for themselves and are to coordinate those. Hence, there are three groups of principles: those that have for their aim the protection of the Peoples internal undisturbed development; the principles that are to deal with the relations between the Peoples that coordinate Peoples' foreign affairs; and finally principles that are to deal with the relations between Peoples and other non-well-ordered societies. The latter principles have as their aim both the protection of Peoples' conceptions of justice and the help that is to be offered to other societies that are not well-ordered.

The Society consists of liberal and decent Peoples, and by no means the world at large. Domain of jurisdiction of the Society is not quite clear. On one hand, society's decisions are subsidiary to the internal law of each people, e.g. different treaties, or commercial agreements between societies; on the other, in cases where human rights violations occur the decisions of the Society are a primary law.

The relation of the Society of Peoples towards the Law of Peoples is in the same relation as the one between the People and its principles of justice. However, principles of justice are in a domestic society institutionalized through vertical system of institutions, starting from the constitution as the highest and most influential, all-embracing legal document, towards the more specific laws that are to be in concordance with constitutional resolutions. Such a constellation does not exist at the world level. Principles of the Law of Peoples are institutionalized through different horizontally dispersed organizations; one might call it a network of organizations that all respect national conceptions of justice, but that also, according to the principle of subsidiary, respond to the principles of the law of Peoples.

#### *Institutional Aspect*

Rawls rejects – following Kant – the idea of a world state as it will either lead to a fragile empire, to despotism or anarchy (cf. LP: 36; Kant 2006, 8:367). The Society of Peoples needs to leave room for its members' self-determination, which is why Rawls argues for "some kind of loose or confederative form" (LP: 61). The principles of the Law of Peoples thus do not tell how to set up a basic structure of a (world) state, but how to organize relations *between* states.

Rawls does not specify what the Society of Peoples should look like. According to Rawls, "Society" is simply a generic name for numerous organizations that organize relations between states with the respect of both the Law of Peoples and the other domestic legal systems. These organizations are many. Rawls mentions only few: one dealing with fair trade among Peoples; another that allows people to borrow from the cooperative banking system; and still another which is to secure global peace, etc. Rawls mentions the possibility of many regional associations that would work under the principles that overlap with the national conceptions of justice. Therefore it is important that all the Peoples are

satisfied.

If we take Pettit's elaboration on the three kinds of societies that are to be seen as individual agents then we can think of at least<sup>50</sup> three options for the Society of Peoples: one with a widely shared set of values and goals; one with a minimal set of common goals and one with a heuristic and debatable bulk of goals and values. All three models are present in Rawls' network of organizations: an organization similar to the UN, ideally conceived, is to take care of a global peace, and hence would, with its general but still quite narrow aim, correspond to the libertarian type of society Pettit mentions. Institutions or organizations that would arrange borrowing from the common banking system or emergency financial relief, like World Bank and International Monetary Fund, ideally conceived, are also to be taken as kinds of libertarian societies. Many regional unions, like that of Benelux, ideally conceived, may be taken as civicity; while the union of Arabic states, ideally conceived, may be taken as a communitarian, comprehensive union. Finally, well-ordered societies will establish new institutions and practices that would serve as a confederate centre and public forum for their common opinion and policy towards non-well-ordered regimes. They can do so within the United Nations or can form separate alliances only for the purpose of discussion and reflection. As Rawls says: "This confederate centre may be used both to formulate and to express the opinion of the well-ordered societies. They may expose to public view the unjust and cruel institutions of oppressive and expansionist regimes and their violations of human rights" (LP: 93). Rawls thinks that this open discussion would not only serve for more trust and stability to be brought in the Society of Peoples, it will also reach outlaw regimes that are not indifferent to this kind of criticism. If not the ruling elite, the criticism may reach civil society that again may urge for a change.

### Cultural Aspect

A Society of Peoples is in the first instance 'society', which means a group agent that acts on a certain goal, with the certain worked out set of judgments. It does not, however, have a status of Peoples, thus it will not have in the cultural aspect the narrow sense of "common sympathies" present in societies. Societies can develop *affinity* towards one another around different issues. Societies are formed for peace, economy, security, etc. There is no necessity for societies cultures to become uniform but there is a great necessity for tolerant, i.e. morally respectable, treatment of every society. Rawls says that it is the task of the statesman, an ideal politician, to struggle against the potential lack of *affinity* among the

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<sup>50</sup> Using the Pettit-model needs to be done with forbearance since all societies in the Society of Peoples are Peoples and hence support active discussion and critical thinking, even when comprehensive doctrine accounts for both political and private institutions. This means that critical thinking, consultation and debate would not be exempt from those international institutions which have closely-linked comprehensive cultures and in which it may look as if justice and the Law of Peoples completely depend on the common conception of the good.

Peoples. Statesmen try to remedy the causes for the lack of affinity insofar as they derive from past instructional injustices or bear on the geographical, and consequently cultural, distances among Peoples (LP: 112). Similarly to the development of sense of social cohesion and closeness on a domestic level, on the international level Peoples may cooperate out of self-interest; as cooperation between Peoples proceeds they may become attached to each other and to their common institutions, which as time passes do not necessarily need to bring much profit. Mutual caring, or affinity, is then an outcome of fruitful cooperation and common experience in dealing with certain global problems, even if the cultures of the Peoples in question are completely different per se.

### *Moral Nature*

The moral nature of the Society of Peoples is expressed through the success and stability of the Society's many institutions. For this it is necessary that the original founders of the Society act reasonably, taking the interest of others into account and have the institutions express the idea of tolerance.

Rawls insists that, precisely because of cultural pluralism, toleration is an unavoidable principle in any kind of international institution. To tolerate means not only to refrain from military sanctions or any kind of intervention, but also to recognize other societies and cultures as equal participating members in good standing of the Society of Peoples (LP: 59). Liberals accept this idea domestically. It coincides with the idea of cultural pluralism: if all societies are required to be liberal, then the idea of political liberalism would fail. In other words, if liberal society is to respect comprehensive doctrines of its members as long as these respect principles of justice, then the same reasoning must apply to the world at large as well. As long as society respects the Law of Peoples, it may affirm non-liberal conceptions of justice domestically.

Kok-Chor Tan notices that toleration is a paradoxical virtue in that it enjoins the acceptance and respect of the unacceptable, in the sense that the liberal society needs to tolerate in its foreign policy what it forbids domestically, e.g. unequal rights for men and women. The tension that is to be overcome by toleration arises when justice requires us to accept and respect ways of life that collide with our own conception of the good" (Tan 2006: 82). However, according to Tan, one can make sense of the paradox if toleration is to be treated as an institutional virtue. Consistent with Rawls' overall framework of justice as the virtue of social institutions, the principle of toleration is seen as a part of the system of public laws and norms that individuals impose on each other.

"Principle of toleration demands that individuals support and maintain background institutional rules and norms that accord different ways of life or practices equal status and respect, not that they should come to personally endorse these ways and practices for

themselves. Thus, individuals may find a given practice or attitude offensive in light of their own conception of the good, and speak strongly in favour of the alternative practices within the rules of institutions. Yet, as agents capable of a sense of justice, they are to recognize, where appropriate, that this is a practice compatible with the rules of justice, and therefore deserving respect, and even protection, from the public-political point of view...We might say that the virtue of toleration is expressed when individuals endorse and support institutional arrangements that protect reasonable ways of life or practices or attitudes that they also find objectionable according to their particular idea of the good" (Tan 2006: ).

Toleration on the international level is also an institutional virtue, i.e. organizations on the international level are to be formed in such a way that the interests of all the reasonable and decent Peoples be treated equally. Hence, the ideal of toleration is built into the idea of international justice. The representatives of Peoples respect the constraints of public reason and offer appropriate kinds of reasons to each other for their action within the terms of the institutions of the Society of Peoples (Tan 2006). If those institutions that are characterized by the idea of toleration prove to be successful, eventually, over time, an *affinity*, a common attachment between participants in the institution will appear and the common political culture of tolerant international organizations will develop.

"Gradually, peoples are no longer moved by self-interest alone or by their mutual caring alone, but come to affirm their liberal and decent civilization and culture, until eventually they become ready to act to the ideals and principles their civilization specifies. Religious toleration has historically first appeared as a *modus vivendi* between hostile faiths, later becoming a moral principle shared by civilized peoples and recognized by their leading religions" (LP: 113).

That is all part of the international moral learning.

### 3.3. CONCLUSION

The concept of Peoples refers to ideal states; it is the account of states in the ideal theory. It describes what ideal states should look like. In this manner, Rawls asserts that idealized states need to have specific institutional, cultural and moral characteristics. Liberal societies ideally have an institutional structure that mirrors two principles of justice; decent societies have an institutional structure that mirrors a reasonable comprehensive doctrine. Both structures are debatable and not dogmatic, and in both societies the population is capable of moral learning or is already practicing their fully developed sense of justice. Culturally, peoples are either a conglomerate of different ethnicities that respect each other and connect through common political institutions, making them a core of common culture and tradition, or culture is comprehensive but rather tolerant towards different cultures. Morally speaking, societies are either reasonable, which means that they have respect for others and are ready to offer



them fair terms of cooperation, i.e. terms that others can reasonably accept; or they are decent, i.e. non-aggressive and respectful towards human rights and ready to take up the offered terms of cooperation. Relations between liberal and decent societies, and their common institutions, are characterized by the idea of tolerance.

Peoples are not to be confused with the real-world states. Rawls' elaboration of the Peoples is a classical case of what Onora O'Neill calls idealization (O'Neill 1989). Idealization assumes predicates that are generally false about the subject (cf. § 2.1.) Any claims made about the Peoples are hence about the ideal, i.e. about the non-existent. The ideal itself can serve as an orientation point, in the sense of being seen as a goal for the societies as we know them today. The three distinct characteristics of people give us a framework for the changes that need to be done, here and now, along institutional, cultural and moral lines.

Thus, those philosophers that object to Rawls' conceptions as being too utopian, since the Peoples do not exist now, miss the point (cf. Pogge 2006; cf. Buchanan 2006; cf. Van Parijs: 1999). As Samuel Freeman rightly notes, no existing society satisfies Rawls' description of liberal or decent hierarchical Peoples. However, according to Freeman, Rawls' aim is to define the limits of liberal toleration in its ideal form, and thus the preconditions for extensive inter-societal cooperation (cf. Freeman 2008).

The idea of the Society of Peoples is also an idealization that "will not have an important place in a theory of international politics until such peoples exist and have learned to coordinate the actions of their governments in wider forms of political, economic, and social cooperation" (LP: 19). Consequently, Rawls does not elaborate extensively on what this Society should look like. He simply thinks that the current state of the world is not the best solution and argues for a network of different organizations or institutions to arrange the relations between Peoples and between Peoples and outlaw states.

Peoples are well-ordered societies or moral states or responsible governments. In any case, they are bounded political entities that have domestic and foreign jurisdiction. They are not a simple conglomerate of civil society or some intergovernmental organization. These organizations are indispensable for global politics, here and now. They act against egoistical interests of powerful states and hence push for more morality on the international level. By referring to these as the Peoples, international law actually points to the key characteristic of the Peoples: their moral nature. The consequence of moral nature of the Peoples is that the foreign policy is reasonable, i.e. national interest, doesn't play a key role. Unfortunately the reality is different and national interest, mostly not directly coordinated by the will of its population, has the ultimate power. Necessity to change that has

been expressed both through law and through philosophy by using the notion of the peoples.

Philosophy indicates the direction in which this should change, towards the more reasonable world, should take place. The first step would be to account properly for the peoples within the national government, i.e. to consolidate national governments so that they can account for the sense of justice of its population. If satisfied domestically, Peoples will be stable and reliable partners worldwide.

## CHAPTER FOUR

### THE PRINCIPLES OF THE *LAW OF PEOPLES*

“This monograph on the Law of Peoples is neither a treatise nor a textbook on international law. Rather, it is a work that focuses strictly on certain questions connected with whether a realistic utopia is possible, and the conditions under which it might be obtained. I begin and end with the idea of realistic utopia. Political philosophy is realistically utopian when it extends what are ordinary thought of as the limits of practical political possibility” (LP: 5-6)

In stating the principles for the Law of Peoples Rawls says explicitly that they are familiar principles known from the theory and practice of international law. A key portion of this chapter will be dedicated to analyzing the relationship between these “familiar and already existent” principles as a part of Rawls’ ideal theory of global justice, and the principles used in international law, here and now.

My thesis is that what Rawls calls “the principles” of the Law of Peoples are actually the principles for the international law of states or rather rules or instructions about how the states should behave in order to become peoples. They are not part of the ideal, but of the normative nonideal theory. Their goal is given by the ideal of the Law of Peoples<sup>51</sup> and international law is connecting the factual state of affairs and the ideal, i.e. being a part of normative nonideal theory<sup>52</sup>. However, as I plan to show, the ideal of the Law of Peoples has not been clearly stated by Rawls.

The theoretical paragon for Rawls’ work on global justice is Immanuel Kant’s essay *On Perpetual Peace*. Kant organizes his essay in the manner of the peace treaties of the day: the first part consists of preliminary articles, while the second contains the definite articles. Preliminary articles are conditions that need to be fulfilled in order for talk of a perpetual peace to take place. In other words, these preliminary articles compare, criticize and instruct the current state of affairs, keeping the ideal in mind. They all in Kant’s essay have a form: “no X shall Y”, defining the elements of the contemporary real

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<sup>51</sup>The Law of Peoples is foremost a normative and descriptive ideal theory about relations between the ideal entities, the Peoples.

<sup>52</sup>Here I follow Martti Koskeniemi in his view on the nature of international law. In his famous monograph *From Apology to Utopia* (2009) Koskeniemi explains the dual function of international law: on the one hand “law cannot be completely independent of behavior, will, interest. If it were we would be at a loss about where to find it and how to justify it. If law had no relation to power and political fact, it would be a form of natural morality, a closed normative code that would pre-exist the opinions or interests of individual States. An early scholarship did assume the existence of such a code. For it, the law existed autonomously as divine will or natural purpose and effectively determined what States should will or have a legitimate interest in. But modern scholarship lacks the faith needed to sustain such a code. For it, law is an artificial creation, based on the concrete behavior, will and interest of States. The attempts to argue on the basis of a natural code are seen as camouflaged attempts to impose the speaker’s subjective, political opinions on others” (Koskeniemi 2009: 18) However, Koskeniemi thinks that the law has also its normative side, if it were lacking “then scholarship would remain unable to oppose to States standards which they refuse to accept at the moment of application and seem apologist. Therefore modern lawyers argue that legal study must focus on law as an interplay of (normative) rules and (concrete) processes” (Koskeniemi 2009: 20-21).

world that need to be changed (Ellis 2005: 75). The definite articles offer mechanisms for establishing the freedom—guaranteeing political institutions. Kant's definitive articles define institutions not for maintenance of a peace agreed through a peace treaty but institutions that would prevent states from resorting to war at all. His principles describe a state of affairs that still does not exist; however, the principles represent an ideal, a clear set of guidelines. In that sense, definitive articles truly are ideal principles.

Rawls' project of global justice not only derives the idea of everlasting peace as its goal from Kant, but also employs something of a Kantian structure. Rawls' principles have the form "X is to Y", a formulation that refers to that which X needs to do in order for something else to happen. Rawls' articles seem to point to the shortcomings in international relations of his day. They are directions on how to get to the world of Peoples but not principles on how the Peoples should prevent falling back to the world of states, i.e. how the world of Peoples is to be long-lasting. Thus, Rawls' project falls short of the truly ideal principles that describe justice arrangements in an ideal world.

Rawls' eight principles may consequently be taken as preliminary principles, or better as rules for the world of *Peoples*. Rules are to satisfy a certain conception of justice, and the conception of justice is formally defined through principles. Rules are adherent to principles, they are interpretations of the principles. In giving us rules instead of what he calls "principles of the Law of Peoples", Rawls stays with his "principles" on a level of normative nonideal theory. This is not wrong *per se*; however, as already established, any substantial nonideal theory presupposes an ideal one. Rawls misses on this part and as a consequence, his "principles" seem to be missing direction.

These rules each correspond to the specific nonideal situation of the real world. All of these rules are necessary, but are still not sufficient for the conception of global justice. Rawls says explicitly that many more "principles" may be added and that the list is by no means complete (LP: 37). If so, then it is not clear exactly why these eight "principles" have been chosen and what the orientating point is for choosing others. The answer I hope to get once I form a substantial descriptive ideal theory for the world of Peoples.

I will first elaborate on "the principles" given by Rawls in TJ, and then on those from LP. "The principles" will be analyzed from two different perspectives: the philosophical and the legal. This I find necessary in order to prove the kinship of Rawls' philosophical arguments with those of international law and hence point to the scarcity of the philosophical which is supposed to guide the legal.

#### 4.1. *PRINCIPLES OF THE LAW OF NATIONS IN "A THEORY OF JUSTICE"*

Principles for global or international justice have been mentioned for the first time in TJ in the chapter that deals with conscientious refusal (TJ: § 58). Conscientious refusal and civil disobedience deal with the nonideal part of a theory of justice for a domestic society; or specifically with the conditions when an individual may protest against the domestic laws. Rawls explains in what cases a disobedience of law is justifiable: if law itself stands against the values of the society or against the society's conception of justice; in other words, if it disrespects principles of justice. Rawls distinguishes between civil disobedience and conscientious refusal. The first being "public, nonviolent, conscious yet political act contrary to law usually done with the aim of bringing about change in the law or policies of the government" (TJ: 364). Conscientious refusal is noncompliance with the specific legal rule or administrative order. The reasons for it may be religious or ethical, therefore, not necessarily political. Conscientious refusal does not necessarily lead to the changing of laws and politics, but it does provoke a reflection on these laws and their rethinking. However, both civil disobedience and conscientious refusal have as their ultimate interest the preservation and strengthening of the institutions of justice of a well-ordered society; hence, they presuppose an existence of a just, or nearly just society or of an ideal theory of justice.

In TJ, Rawls' motive for thinking about justice beyond the society's borders is again the preservation of justice within that society. This time, however, with regard to the threat of it coming from beyond its borders: wars, attacks, etc. With his mini-theory on conscientious refusal and civil disobedience, Rawls gives us the nonideal normative theory that would lead to the ideal theory. This time, the society needs to protect itself from the calamities that come from the outside: wars, attacks, etc. In this nonideal state of affairs the question is how the state<sup>53</sup> should conduct its policies in order to again establish peace and justice for its institutions.

The principles Rawls lists in TJ are the following:

1. Principle of equality.
2. Principle of self-determination, the right of the people to settle its own affairs without the foreign intervention.

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<sup>53</sup> In TJ Rawls uses the terms states or nations, "peoples" are not explicitly mentioned as a politically independent entity, they are referred to as one of the characteristics of the state in the sense of its population which has an ability to self-determine its government.

3. The right to self-defense against attack, including the right to form defensive alliances to protect one's right.
4. The treaties are to be kept, provided they are consistent with the other principles governing the relations of state.
5. *Jus in bello* respects traditional prohibitions that protect human life.

The first principle is clearly a preliminary that needs to be in place in order for any kind of cooperation between the states to take place, it teaches us about how the “peoples organized as states” formally treat each other. The second principle expresses the protection of internal self-determination from foreign intervention. The third principle is the continuation of the second and allows for the armed defense of self-determined internal affairs. It settles the reasons for the *jus ad bellum*. The fourth principle is analytical to the concept of treaties between well-ordered societies, since the treaties are the bilateral agreements that need explicit consent. If the well-ordered society that has a population capable of self-determination consents to an agreement, it follows *a priori* that they are to obey it. Finally, the fifth principle defines *jus in bello*, settling the respect of human rights as the constraint to war activities. Even in war, well-ordered societies need to respect human life.

Hence, “the principles” are rules on how international law should deal with the concept of sovereignty. Rawls is definitely against using the powers of sovereignty for imperialistic, nationalistic purposes, which was traditionally the case. A state's egoistic interests need to be constrained by international law. Though Rawls asserts as much, he does not assert what the cooperation between these constrained, well-ordered states looks like. The true role of political philosophy is to lay the moral groundwork for the development of actual jurisprudence. As Marti Koskeniemi states, international law responds, on one hand, to the concrete problems of the world and on the other, it depends on the philosophical and moral ideals (Koskeniemi 2009: 27). Rawls' theory should serve this latter aspect.

#### 4.2. THE PRINCIPLES OF THE LAW OF PEOPLES IN “THE LAW OF PEOPLES”

In the *Law of Peoples* Rawls lists eight principles that Peoples shall abide by if they are well-ordered; thereby there is not one single institution that originates and is to coordinate this behavior. Rawls talks about many different institutions or agencies of the Society of Peoples. The Society is a generic name for different bodies. Society is not a world-state.

As already indicated, the principles have been chosen in the second original position. Second original

position builds on an analogy with the domestic case and in LP it has two parts, featuring decent liberal peoples in the first and decent hierarchical peoples in the second.

In the first part of the second original position, the parties are representatives of liberal peoples. Their interest is to make sure that citizens can keep their comprehensive doctrines, acknowledging at the same time the political conception of justice as an internal order of the society. In other words, their interest is to ensure the security and safety of their citizens and to preserve their free political institutions. Furthermore, each people will want to preserve self-respect and would want others to respect them, their culture and territorial integrity. Peoples need to find “public basis of justification” (LP: 32) for their interests in terms of the Law of Peoples.

In order for a law among Peoples to be fair, the representatives of the Peoples must be settled behind a veil of ignorance. They do not know “the size of their territory, or the population or relative strength of the people whose fundamental interest they represent” (LP: 32). Under these conditions, the eight principles of the Law of Peoples are selected. These principles, set by Rawls while reflecting on history and usages of international law and practice, do not face up the alternatives, which was the case in the domestic original position. Rawls does not explain why this is so (cf. § 5.).

This list of eight principles is not by any means complete and its implementation may take different forms. Rawls mentions institutions that would be similar to GATT rounds, World Bank or United Nations, European Union or the Soviet Union. However, a more detailed description of the institutional interpretations of the law is absent.

The second part of the second original positions deals with decent hierarchical societies. The procedure is the same, but since the internal organizations of liberal and hierarchical peoples differ, they have to be represented in two separate original positions. The representation model requires formal equality of the representatives.

According to Rawls, both decent and liberal peoples agree on the eight Principles:

1. “Peoples are free and independent, and their freedom and independence is to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe a duty of non-intervention.
5. Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense.

6. Peoples are to honor human rights.
7. Peoples are to observe specified restrictions in the conduct of war.
8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime.”(LP: 37)

Principles of the law of peoples from the book *The Law of Peoples*, and from the article under the same name, differ slightly. The eighth principle appears only in the book. The other seven are present in both works in different ordering and in somewhat different formulations. I will comment on each of the principles in the way they appear in the book; however, I will try to account for the differences between the book and the article. Each principle will be presented in connection to its legal counterpart. Legal provisions that will be here analyzed are part of the official documents of the United Nations; hence the analysis will be comparative between legal and philosophical principles. I hope to show that Rawls’ philosophical argument stays on the legal level, but that both refer to the world of states rather than to the world of peoples. Hence, Rawls’ theory of global justice, although it promises to do so, does not give us a “systematic moral view” (Buchanan 2004: 16) his theory is still in necessity of true principles which may account for the rules of international law.<sup>54</sup>

#### 4.2.1. FREEDOM AND INDEPENDENCE

1. “Peoples are free and independent, and their freedom and independence are to be respected by other peoples”(LP: 37)<sup>55</sup>

“Every State has a right to independence and hence to exercise freely, without dictation by any other State, all its legal powers, including the choice of its own form of government.”

Art. 1., *Draft Declaration on the Rights and Duties of States* (1949)

#### *Philosophical Interpretation*

This principle of Rawls’ LP tells us about the way Peoples order their internal, and consequently, their foreign affairs. It has two elements: freedom and independence. The former tells us that the substantial

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<sup>54</sup>In limiting legal analysis only to the legal texts of the United Nations does not mean that some other existent international regimes would not serve the purpose as well. However, the United Nations, with its many agencies and its universal membership, is by far the most extensive international regime and in that sense the most adequate practical example for proving our point: that Rawls’ principles are nothing more than the practical rules similar to those of the United Nations, which does not deal with idealized but factual states, and that his theory still awaits true principles that would account for these.

<sup>55</sup> In the Amnesty Lecture (1992) and the Article published in the *Inquiry* (1993) the first principles reads: “Peoples (as organized by their governments) are free and independent, and their freedom and independence is to be respected by other peoples”. Hence, Rawls stresses that by the “peoples” he means a specific form of government. This stress was not necessary in LP since the entirety of chapter 2 is devoted to the explication of Peoples.



characteristic of the 'peoples' is being a master of its own political faith. Peoples are free to decide on the form of their own government, i.e. their own social, political and economic life as they please. When defining Peoples, Rawls stresses self-determination as one of the key ideas. The citizens of liberal societies are to discuss all political issues democratically. They have equal rights and opportunities to express their opinions. Members of hierarchical societies are similarly to have their forums of representatives where consultation takes place. Hence it is the peoples in both types of societies who decide upon society's conditions. Thus, society is free in the Kantian sense, i.e. the only laws it subjects itself to be those that its population chooses. They are neither subjects of any foreign force nor of any authoritative ruler. The population is itself a sovereign.

The condition of independence builds on the idea concept of self-sufficiency. In TJ, self-sufficiency has been greatly elaborated: society is a closed system in which people are born into and leave at death. Society secures for its citizens a morally and economically respectable life. The idea is once more taken up in the theory of global justice when Rawls stresses the importance of political education. He argues that any society may become well-ordered and satisfied as long as it finds the right political structure that accommodates the cultural, sociological, psychological and historical needs of its peoples, and the natural resources a society has. Thus, according to Rawls any society may be self-sufficient and in that sense independent.

However, in the context of international relations the concepts of freedom and independence also have a wider meaning. It is important that a society, though self-sufficient and free in its internal affairs, be independent and free in the political sense from other societies and to be recognized by others as such. Though self-sufficient, no society develops alone. Societies have fundamental interest in preserving the achievements of their internal freedom and independence that is their "common awareness of their trials during their history and their culture with its accomplishments" (LP: 34). Societies have an interest in recognition and respect from others, and are ready to show it to others; in doing so, they differ from states that traditionally care only for profit. This means that colonies or protectorates do not pass this condition and as such cannot be members of the Society of Peoples. The two conditions, internal and external independence, are interconnected since there can hardly be freedom in decision-making when the state is not independent, and vice versa.

This principle in Rawls version, as applied to the peoples, has a moral value. It points to the way societies perceive and are to be perceived by other societies. It contains the aspect of being reasonable, since the freedom and independence is to be respected even if it collides with the immediate benefit of the society. This principle is thus more of a restatement about the moral character of the Peoples. It is normative, a guideline for entities that are not the Peoples and do not have a moral

nature.<sup>56</sup>

### *Legal Interpretation*

Freedom and independence in international law is usually accounted for through the doctrine of sovereignty. This doctrine has been one of the key elements of international relations since the seventeenth century but its meaning was never clearly settled. It basically says that the state is free to make its own determinations on all political, cultural and social issues on its own territory. States, therefore, have a right and responsibility to frame their own domestic and foreign policies as they think it suitable (Tomuschat 1999: 164-170). The sovereign power of the state or its decision-making body changed over centuries. In the early stages of the formation of modern state, from around 1648 until the formation of the first republics in 1789, it was the ruler who had the last word on policies in the state and towards other states. In modern times, especially after World War II (WWII), the idea of sovereignty is connected to the idea of self-determination.

“Self-determination provides the best justification for recognizing sovereignty, and it reflects at the same time the democratic principle, which today is alone considered capable of legitimating the exercise of public power. Sovereignty operates as a legal device permitting a people to pursue its political goals within the community of nations, on the one hand, and reject any attempt at interference in their internal matters, on the other hand. Thus, a people is master in its own territory. It holds comprehensive powers to decide on anything that may require regulation” (Tomuschat 1999: 165-166)

Therefore, on one hand internal sovereignty was constrained by self-determination in the Kantian sense that peoples were bound only to the laws they give themselves, but on the other external sovereignty was bound by the respect for other Peoples' territoriality as one of the key elements of sovereignty. Sovereignty has become more relaxed since the globalization process is underway and territoriality is seen as less important. However, freedom and independence, development and mutual recognition are all done on the state level. Before the global state comes into being, borders will be important no matter how flexible these may be, overlapping would mean conflict and contradiction. Sovereignty, and consequently freedom and independence, need to work within the borders of the states and to respect them.

Many states that are economically dependent are also conditioned in their international and even internal affairs by this dependence and are therefore not free. International law should provide rules that

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<sup>56</sup> If we take it to be normative for the Peoples, then we have tautology: “the principle” is then saying is that free and independent societies (the Peoples) are to respect other free and independent societies as free and independent. The principle makes sense only then, if the respect for freedom and independence is asked from the societies which are still not, but are aspiring to be free and independent.

will minimize this, especially the rule stressing the necessity of freedom and independence.

#### 4.2.2. TREATIES AND UNDERTAKINGS

“2. Peoples are to observe treaties and undertakings” (LP: 37)

“The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

a. International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;”

Article 38, International Court of Justice

##### *Philosophical Interpretation*

The basic idea of the theory of justice for a domestic case is the idea of fairness. Fairness is that kind of social cooperation based on publicly recognized rules and procedures that those cooperating accept, knowing that other do that too, and regard it as properly regulating their conduct. The acceptance of the rules of conduct is voluntarily explicit or implicit. The latter considers the cases when one without explicit consent accepts the advantages of the cooperation, and correspondingly the rules of the cooperation as well. The idea of cooperation also contains the idea of each participant's rational advantage. It is this idea of rational advantage that initiates the people to seek co-operation at the first place.

People enter into cooperation as free and equal, with the clear idea of what they want but at the same time with respect for the wants of others. Rawls develops the same idea on the international level: the Peoples are free and equal; each has its interests and is willing to cooperate with others in order to pursue their own interests. Interests of well-ordered liberal societies are preserving their territory, ensuring the security and safety of their citizens, and preserving their political culture with its cultural pluralism (LP: 29; 34-35). Interests of a non-liberal culture are preserving its political institutions and its overwhelming conception of justice. At the same time, the Peoples are not aggressive and not imperialistic and will respect the interests of others (cf. § 3.2.1). When concluding actual treaties with other Peoples it is assumed that they will comply, at least in the ideal theory. To stress the necessity for compliance is to focus on the anomalies of the nonideal theory and not to develop the idea of co-operation between the People.

##### *Legal Interpretation*

The sources of international law are traditionally: (1) treaties, (2) custom, and (3) general principles of law and equity. Article 38 of the International Law Commission (ILC) establishes the forms of law-

making authorities, lists treaties at the first place.

“To a certain extent, treaties and international law are often treated as one and the same. Custom and general principles act as sources of international law in the absence of a treaty. This hierarchy emphasizes a positivist concern with state consent over the internalization of norms. It prefers the formality and definition of treaties over less tangible sources of law.” (Cohen 2007: 70).

Treaties are usually written documents that bind sovereign states by their explicit consent. Ideally, states enter into commitments through treaties by their own free will, and hence it is expected for them to comply. Modern international law recognizes two problems with the doctrine of treaties: they may not be signed by the entirely *free will* of the parties and even if signed by the free will of the parties, the parties sometimes do not comply because the political reality asks for different kind of conduct.

Concerning the first problem, the political and economic situation may put a lot of pressure on a state in order for it to accept the treaty and the regime it supports. Hence, the treaties may be a product of a *modus vivendi* situation of international relations. However, outside pressure may have positive consequences as well; by accepting certain treaties states may be forced to change their policies in a good way.

The second problem is an empirical fact that amounts to:

“A long list of well-known, high-profile treaty violations. Both the U.S.-led invasion of Iraq and NATO intervention in Kosovo proceeded without the Security Council authorization required by the U.N. Charter. Prisoners captured by the United States in Iraq and Afghanistan (as well as elsewhere) have suffered abuse despite clear treaties prohibiting their mistreatment. And most of all, states like Sudan, Saudi Arabia, Uzbekistan, and Zimbabwe continue to violate the human and civil rights of their citizens in direct contravention of the human rights treaties they have signed” (Cohen 2007: 67).

The solution to this problem leads to the reconsideration of treaties as the primary source of international law.

Legal interpretation about the respect of treaties actually says that although treaties are still the most important source of international law, these are in many cases disregarded. The treaties may in political practice not have been willingly signed, or in political reality may impose the necessity for other conditions. There are many suggestions as to how these two problems may be overcome, either by allowing more interpretational force by the lawyers or by improving general circumstances in which treaties evolve.

Rawls' instance on the treaty observation seems to point to the unease that the observance of treaties

faces in international law. However, his ideal theory does not point to the direction the unease is supposed to be solved.

#### 4.2.3. EQUALITY

“3. Peoples are equal and parties to the agreements that bind them” (LP: 37)

“All States are juridically equal and, as equal members of the international community, have the right to participate fully and effectively in the international decision-making process in the solution of world economic, financial and monetary problems, *inter alia*, through the appropriate international organizations in accordance with their existing and evolving rules, and to share in the benefits resulting there from.”

Article 10, *Charter of Economic Rights and Duties of a State* (1974)

#### *Philosophical Interpretation*

When discussing equality within a domestic case, Rawls distinguishes between two ideas. One is that of sameness, or equality, of moral nature or the moral powers of citizens. The other is the equality of social and economic primary goods, i.e. equality of distributive justice.

Taking the first aspect under consideration Rawls analyzes the two moral powers: the capacity for the sense of justice and the conception of good as the basis of equality. Rawls distinguishes the idea of equality in a political society from the equality in some other community or association. Equality here means that the persons are perfectly capable of formulating principles of justice in accordance with their conception of good (or their rational advantage) while aware of the others with their different conceptions of the good and of necessity for the cooperation with these others. A sense of justice is necessary in order for the principles of justice to account for many different conceptions of good. A sense of justice together with the powers of reason (of judgment and thought) is also necessary for everyone to willingly accept and conduct themselves according to the principles of justice. Hence this is the equality of equal formal propensities.

The second aspect of equality—equality in the distribution of goods—is not equality in a literal sense. Rawls here asks whether any departure of literal equality in all social and political goods would be permissible and gives a positive answer in the case of domestic justice. The answer here is that inequalities are justified if they are to the benefit of all citizens of society. This sort of quest for equality is called *democratic equality*.

Democratic equality is a complex form of egalitarianism: it allows inequalities that produce incentives for higher productivity. The idea is that the contingencies of birth and luck are not deserved and that

society is to mitigate the effects of these contingencies so that everyone would have same amount of rights and liberties as well as the same opportunity in proportion to his or her expectations. Democratic equality is not about mitigating inequalities as such, but about mitigating the effects of inequalities on the expectations of people. Hence, two principles of justice are the expression of democratic equality. They are chosen in the original position, the state of literal equality.

Parallel to the domestic case, Rawls advocates equality on a global level. The societies are globally considered equal if they have equal, in the formal sense of well-orderedness, institutions. Well-ordered institutions enable societies to participate in formulating principles of justice on the international level, or rather fair terms of cooperation between different societies with different interests. However, there is at least one common interest, that of protecting their own self respect. Self-respect consists of the recognition from other peoples and hence in the recognition as equal partners in cooperation. Hence, the equality means formal equality in the institutional arrangements, and formal equality of interests (though substantially institutions and interests differ in different societies). Formal equality of societies is represented in the idea of the original position of the second level. In the original position, which is the impartial way of representing the parties in order to gain the principles of justice, the parties are situated symmetrically and represented as equal. They do not know their substantive characteristics but only their formal ones, i.e. they know that they are well-ordered. In such a way the parties are equal in their decision-making capacity and are equally bound by it. Only in assigning them an equal status would the differences be truly accounted for through the principles of justice.

Therefore, on the one hand there is formal equality and on the other there is substantial inequality of the societies. They do not have same geographical characteristics or the same wealth. Once the principles of global justice are in place it may so happen that some societies will have to invest more in the global arrangements, or may have a higher cost than the immediate benefit. This aspect is analogous to the idea of democratic equality. Since not all societies are democratic, this type of equality may be called *decent equality*. This means that formal equality is preserved while substantially the societies are unequal and these inequalities work for as incentives for overall higher productivity and mutual support. One of the ways of practicing *decent equality* is though what I call the *principle of solidarity* and will be presented in § 6.

Some may think that it is not fair to treat the societies as equal if these do not treat their members equally (the case of non-liberal societies). However, Rawls thinks that this is part of the idea of toleration. Equal respect, which is due to substantially unequal societies, shows understanding for different cultures. The Peoples have this characteristic *per se*; it is not a normative requirement for the world of Peoples but rather its analytical description. Therefore it is awkward that Rawls stresses it as one of the principles in the ideal theory.

### *Legal Interpretation*

In international law two aspects of equality, formal and substantial, have been present for quite some time. Formal equality was established long ago by naturalist writers who saw states analogous to the people before entering into the political state, the so-called 'state of nature'. However, it is obvious that equality between states can only be legal and not substantive or factual. States are unequal in their characteristics: they are of different sizes, wealth and are inhabited differently with varying traditions and histories. The legal equality embodied the same recognition for, big and small, powerful and weak states. "This principle is characteristic of the law itself. It explains the nature of the legislative principles: they are to treat all subjects equally" (Tomuschat 1999: xxx), depending of course on their status under the law.

There are some attempts to expand on the concept of legal equality so that it is not merely formal but also a substantive equality. Equality is interpreted, with the establishment of a New International Economic Order (NIEO),<sup>57</sup> as equality of opportunity and hence connected to the right to development. This signifies a general legal obligation on the part of the international community to economically and politically support developing states so that they can become free and independent and make a full use of rights and duties under international law. In other words, it means that equality presupposes that poorer countries be provided with assistance on the part of the rich. International law is very scarce on the concrete legal provisions in this matter. However, the precepts on how to deal with substantial inequality actually account for formal equality. International law is still coping with the idea that formal equality should not suffer due to substantial inequality; stressing formal equality makes sense as a normative requirement for the world of states.

#### **4.2.4. NON-INTERVENTION**

"4. Peoples are to observe a duty of non-intervention" (LP: 37)

"No state may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind."

*Declaration 2625 (1970)*

### *Philosophical Interpretation*

This principle is the ultimate protection of state sovereignty and autonomy. It essentially says that a

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<sup>57</sup>NIEO is a set of proposals presented to the UN during the 1970s by developing countries. These countries asked for fairer trade regulations and more development aid. The proposals were spelled out in the Charter of Economic Rights and Duties of the State (1970). The Charter was never accepted but it marked the end of Breton Woods and indicated the necessity for more financial and intellectual help for Third World countries.

state's internal affairs, its resources, the distribution of rights and burdens among its citizens, are the state's own business and no foreign force has a right to interfere with it. The idea of non-intervention is closely connected to the previous four points: freedom, independence, ability to make contracts with others and equality. They all account for the ideas of state sovereignty (cf. § 2.1.) and autonomy. In modern times the idea of non-intervention is said to be the other side of the coin of the idea of self-determination (cf. § 3.2). In order to realize why non-intervention is important I will first investigate the form, agents and goals of its counterpart, i.e. intervention, before turning to the conditions of its permissibility.

Henry Bull gives us the following definition of intervention: "Intervention is dictatorial or coercive interference, by an outside party or parties, in the sphere of justification of a sovereign state, or more broadly of an independent political community" (Bull 1984: 1); Charles Beitz distinguishes between broad and narrow definitions of intervention. The narrow definition truncates the form of intervention solely on the military intervention, while "at the most general level, intervention refers to actions or policies designed to influence the affairs of a sovereign state and carried out by an agent external to that state." (Beitz 1979: 72). Henry Bull's definition infers *a priori* that the intervention is "dictatorial or coercive interference" however it refers to the broad scope of agents that can be involved in the definition: they are referred to as the political community in general. Beitz's wide definition on the other hand stays value neutral but is focused on the sovereign states. Simon Caney argues that the real definition of intervention must be both value neutral and has to involve a broad view on actors of intervention: these need not be only sovereign states but anything that qualifies as an independent community. Consequently, Caney concludes that any definition of intervention needs to have three parts: 1. Coercion; 2. Intervention may be conducted by institutions different than states, i.e. the United Nations or European Union, or the International Monetary Fund; 3. The entity in which the intervention takes place need not be a state but more broadly a political community, so that the intervention can be directed to political regime other than the state (Caney 2005: 229).

Coercion may be again defined in different ways. It may be taken to mean exclusively military force or it may be taken to mean more subtle methods as economic or diplomatic sanctions. Military interventions involve military action, e.g. the bombing of a target community; deployment of troops; assistance in trainings and import of weapons. Non-military intervention includes embargos or sanctions or monitoring of elections. Goals of the coercion may also vary; they may infer a change in the formal structure of authority in a given state or a change in a particular policy.

There are two lines of argument against intervention, military or other. The first takes sovereign states as agents of interventions and builds on the analogy of state with the person. It parallels the



sovereignty of a state with individual liberty. The view originated with Christian Wolff, whose argument is as follows: The first premise of the argument says that nations are regarded as individual free persons living in a state of nature. The second premise emphasizes that all nations are equal, just as all men are equal, and therefore their rights and obligations are the same (no matter how substantially and formally different they are). Finally, by nature no ruler of the state has a right to interfere in the government of another and has no jurisdiction on the affairs within the other state (Wolff 1749: 9; cf. Beitz 1979: 75). Wolff's argument is the defense of the Westphalian world-view: states are sovereigns in their territory and over their own people.

Kant takes up this argument. In his essay, *Towards the Perpetual Peace*, the fifth preliminary article forbids the intervention of one government in the affairs of the other. Kant is an ultimate advocate of individual liberty and self-determination. He sees the states also as moral persons because they originated through the free will of its citizens. Citizens are only subjected to the laws they give themselves and any kind of imposition from the outside is not to be justified: "It is a society of men whom no one else has any right to command or to dispose except the state itself. It is a trunk with its own roots" (344/b/). For Kant, intervention is not permissible even when the state is badly governed; change needs to come from the inside, the people themselves need to realize how they want to be governed. If they would allow intervention in some cases but not in others, it would mean subduing their moral theory to political bargaining and this is exactly what Kant tries to avoid. In his view, only when the rulers of Europe stop interfering in each others affairs can there be favorable ground for the reconstitution of the political regime in which individual liberties are to come to its fullest. Decisions can be influenced, one can and should argue about the ideas but none should be enforced. In Kant's essay "On the Common Saying" he writes that non-intervention is the precondition for the world of republics. Kant is against both narrow and wide definitions of intervention.

Rawls learns from Kant. He sees the individual as a self-authenticated source of valid claims, and political society as the People; hence as an adequate expression of people's will. The people determine the form of their government and since Rawls' Peoples are well-ordered and reasonable, the logical consequence of their character is that they do not intervene in each other's internal affairs and condemn everyone that do, e.g. non-well ordered societies. However, Rawls sees one case where the duty of non-intervention should be suspended: the case of a serious violation of human rights. Rawls stresses that it is respect for human rights that is "sufficient to exclude justified and forceful intervention by other peoples, for example, by diplomatic and economic sanctions, or in grave cases by military force" (LP: 80). Further, he says that, "An outlaw state that violates these rights is to be condemned and in grave cases may be subjected to forceful sanctions and even to intervention" (LP: 81). In the same

vein Rawls' directly answers the question whether an intervention is ever justified. He writes: "If the offenses against human rights are egregious and the society does not respond to the imposition of sanctions, such intervention in the defense of human rights would be acceptable and would be called for". Hence, those societies that do not respect human rights are not immune to the doctrine of non-intervention.

Stressing the duty of non-intervention while introducing it at the "back-door" makes us reconsider the motives for its suspension in the first place. There can be two reasons for the suspension. Both are a direct reaction to the political realism, i.e. factual political history of Rawls' time. First, Rawls is also fed up with political bargaining and wishes for a world where no one would be disturbed in finding his/her own way of determination. Second, Rawls is aware of how the rational interests of states may lead to the serious human rights violations. Even if a state is not interfering elsewhere, its own population may suffer. Rawls raises a voice against this.

However, it is peculiar that Rawls stresses the duty of non-intervention in what he calls the ideal theory. If the world of Peoples is in place, then the logical consequence of that world is that peoples do not intervene. They allow everyone to self-determine, even to those societies that are not yet well-ordered, to whom People offer humanitarian help.

### *Legal Interpretation*

Intervention, according to Tomuschat, is one of the most difficult concepts of international law. Tomuschat defines intervention in a broad way as any type of coercion, not necessarily the military one and not necessarily only between states.<sup>58</sup> The duty of non-intervention was explicitly mentioned in Article 2 (7) of UNC. The Article states that the organs of the UN, i.e. international regime, are not allowed to intervene in the issues that are under the jurisdiction of the sovereign states. This rule expressed on the one hand the old-fashioned, Westphalian conception of sovereignty, and on the other clearly indicated that although international organizations are in the making there is no tendency towards a world state.

Non-intervention between sovereign states is taken to be an auxiliary principle to the principle of sovereign equality, expressed in the Article 2 (1) of UNC, which says that no state has a right to intervene in the affairs of the other. The negative consequences of this type of interference is legally more difficult to establish i.e. there are many more subtle ways in which states can coerce each other

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<sup>58</sup>Tomuschat is actually explicit in separating the principle about the use of force and the principle of non-intervention. The former being military, while the latter may mean any kind of influence. The former is accounted for by Article 2 (4) and Chapter VII of UNC and Kellog-Briand pact, Resolution 2625 (XXV), while the latter by Article 2 (4) of the UNC as well as Resolution 2625 (XXV). The two interrelate in many documents and are not strictly distinguishable.

under the banner of “co-operation”.<sup>59</sup>

However, this condition had to be relaxed as the idea of human rights protection advanced. Intervention was not to be prohibited in the cases of human rights violations. These interventions are called humanitarian and are usually a kind of military intervention of one regime (not an individual state) into the affairs of some, in most of the cases, sovereign state, for the sake of human rights protection. However, the question is when the violation is serious enough in order for intervention to take place and “who or which institution is to make a call” (Frank 2010: 547).

There are basically three problems with the legal enforcement of intervention and hence three arguments, from a legal point of view, for insisting on a duty of non-intervention. The first is that the intervention may be misused as a cover for the rational interests of the intervening party. The second is that recognition of a right to intervene for humanitarian reasons does not guard against selective response to that right, i.e. the interventions occurring exactly in those parts of the world where they coincide with the economic advantages of the interveners. Finally, there is no centralized world order and hence no established way of expert opinion-making about the situation on the ground. This factual uncertainty again allows space for misuse.

Today, Chapter VII of the United Nations Charter is considered to be the most important authority that approves intervention; however, it does it only implicitly. Chapter VII approves the use of force in the cases of serious threats to world peace and security (cf. UNC, VII), human rights violations being one of them, and with the approval from the members of Security Council. Thus the law asks for approval from different instances with many different interests. The law is trying to be unbiased. However, the intervention can be stopped by the veto of one of the members of the Council. This system makes the Council on the one hand less operative, or more cautious, but on the other hand more prone to the individual interests. Consequently, there are cases in which intervention was undertaken even without an approval of the Council, e.g. NATO intervention in Kosovo in 1999; or cases when the intervention failed although there was a serious threat, e.g. Rwanda genocide in 1994.

Thomas M. Frank notices that humanitarian intervention is not only:

“Fraught with problems of factual uncertainty, but also with abuse by those who find convenient cover in the ‘right’ to intervene for bogus ‘humanitarian’ purposes. It is true that legal principles cannot be faulted for being abused by the unprincipled. However, a legal principle that lends itself to frequent abuse-as humanitarian intervention has done-may not state a desirable rule, or may state it badly” (Frank 2010: 537).

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<sup>59</sup>Tomuschat provides the example of Japan and its vulnerability to energy resources. Its economy could collapse within days if the shipments of crude oil were to be stopped. The shipments are part of normal trade links between the sovereign states; however, the structural dependency of Japan makes it vulnerable to different coercive measures (Tomuschat 1999: 235).

Here I want to make one more parallel with Kant's work and political context. The French Constitution from 1791, as well as the Constitution from 1793, bans the conquest of and intrusion in another state (Art. 119), at the same time it stresses the alliance of French-people with all free people around the world. In the name of freedom France then intervened in Belgium and Netherlands in 1793 (cf. Gerhardt 1995: 63). Kant did not approve of that as he sustained that, bad conditions in other states should only be a lesson for making one's own state better and to consider its own citizens as the ends in themselves.

Rawls was a contemporary of the Hiroshima and Nagasaki intervention, of the Cold War, of the Kosovo and Somali interventions. I see no other reason for selecting the duty of non-intervention among the traditional principles of international law but to point to the mistaken praxis of his day. However, as such it does not fit to the principles for the ideal theory but more of preliminaries. Rawls' principles simply express the standpoint of international law.

#### 4.2.5. SELF- DEFENSE

"5. Peoples have right to self-defense but no right to instigate war for reasons other than self-defense." (LP: 37)

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

Article 51 of the Charta of United Nations (1945)

#### *Philosophical Interpretation*

This principle discusses the conditions for *jus ad bellum*. Rawls builds his theory of just war on the extensive work of Michael Walzer on that topic (cf. Walzer 1977). In LP, Rawls gives us a distilled and simplified version of Walzer's argument.

Rawls classifies societies into five groups: liberal societies, hierarchical societies, burdened societies, outlaw societies and benevolent absolutisms. Among these different kinds the so-called outlaw states are aggressive and do not comply with the law of peoples.<sup>60</sup> In most cases they also violate the human

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<sup>60</sup> Burdened societies and benevolent absolutisms also do not comply with the law of peoples but are not aggressive.

rights of their own citizens. These societies may, as a matter of last resort, be dealt with through military intervention. Hence military intervention is, according to Rawls and Walzer, justified as the means of self-defense, and for humanitarian reasons. The traditional doctrine of *jus ad bellum* has suffered a radical change in the sense that war is not seen as justified when it is undertaken in pursuit of a society's rational interest.

The idea of self-defense is complex. It may be interpreted in different ways depending on how the ends and purposes of a society are defined, i.e. what there is to be defended. It concerns the protection of the sovereignty of internal affairs of one's own society. Thereby, Rawls thinks that only a legitimate political society, i.e. a society that respects the law of peoples, has a right, internationally affirmed, to self-defense. The idea encompasses also the fact that the right to self-defense also assumes the right to form a friendly alliance in defense of a third party (LP: 91 ft.2). Therefore, the right is transitional to those who share the same values. These need to be clearly states.

Liberal societies have the right to self-defense. Through self-defense a liberal society protects the basic freedoms of its citizens and its democratic political institutions. Conscription, i.e. infringements on individual liberty, in these societies is allowed solely for the sake of greater liberty or for the preservation of a just regime (LP: 91). Rawls' argument here is very Kantian. Rawls also stresses the fact that in a liberal society the people take political decisions. The people would hence have to approve a war. This would be done, according to both Rawls and Kant, only in cases in which aggression infringes on their rights, liberties and possibilities of development. To grow up in a liberal democracy means not only developing a sense for one's own needs but also a sense for the well-functioning and justice of the whole of society, i.e. a sense for what other parts of society need. The effort of the peoples will therefore be concentrated on realizing these goals and not on starting wars. Protection also means the protection of one's own development as well as the development of others who share the same conception of justice (cf. LP: 91-92).

Non-liberal societies have an extensive mechanism of consultation that allows the intermediate participation of members of society in political decisions. Only then are they considered legitimate in the eyes of their own people and in the eyes of the international community, and only then may a society employ war as a method of self-defense. Through the self-defensive war, liberal societies defend their liberal culture; non-liberal societies defend their reasonable comprehensive doctrine.

Self-defense should not infringe further on the human rights of either the defended or the aggressive people (cf. § 2.7).<sup>61</sup> One should strictly delimit from the humanitarian military intervention. The society

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<sup>61</sup>Rawls actually lists three groups of societies that are eligible for the right to self-defense: liberal, decent and benevolent

that undergoes military intervention because of a human rights violation does not have a right to self-defense. According to Rawls, these societies do not have anything worth defending.

A war is justifiable only when it is seen as necessity, i.e. in defense of just institutions. The war as an armed intervention is by itself never sufficient grounds for restoring or establishing a just state of affairs. A war always needs to be accompanied by extensive deliberation on the exact steps that led to it, the political conduct during it and a vision of the state of affairs it should bring about.

A theory of a just *jus ad bellum* is clearly a nonideal one.<sup>62</sup> It is directed towards the restoration of the ideal state of affairs. As such, it is causally prior to the ideal state of affairs, but it is logically posterior.

### *Legal Interpretation*

The view on the use of military force, i.e. means of war for settling international disputes and achieving national goals, has radically changed in the past fifty years. After World War I, international relations switched to an even more profound cooperation. This was institutionally expressed first through the formation of the League of Nations and then through United Nations and its many agencies. Before the League, one cannot really talk about the uniformed system of international law. This was particularly visible considering the use of force. If a central organization, which coordinates a use of force, is lacking each state is a judge in its own case.

The League created a system of diplomatic, peaceful sanctions to be employed before resorting to war. It formed a central organization to pass a judgment on whether the states fulfill their obligations. If not, sanctions were to apply. If these do not work, members of the League resort to war. The conditions of *jus ad bellum* were strictly defined (Art. 12- 16 of the Covenant of the League).

The Covenant of the League was fortified with the Pact of Paris or the so-called Briand-Kellogg Pact (1928). This Pact declares absolute illegitimacy of war in pursuit of nationalistic goals. The Pact was concluded outside of the League and hence is in power to this day, long after the League fell apart. The Pact did not prohibit war out of self-defense. There was a committee of jurists appointed to report whether a war in self-defense was to be justified and whether all other options had been exhausted.

The United Nations has a more comprehensive structure and was formed as a direct response to the atrocities of World War II. The Security Council has an obligation to investigate any international dispute

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absolutisms. However, I think that Rawls makes a mistake in listing benevolent absolutisms among the societies eligible for the right to self-defense. Rawls says that these societies, though not well-ordered, do respect human rights and are not aggressive. However, I do not see how an absolutistic regime can respect human rights. It can be non-aggressive in its foreign policies, and in that respect not infringe on the human rights of other societies. The internal affairs of benevolent regimes are by no means worth defending. Acknowledging benevolent absolutisms as legitimate regimes confuses Rawls's moral standards and seems to be a great concession to political practice.

<sup>62</sup> Rawls him-self affirms this.

that may endanger peace and should recommend procedures for settling it. Actions by the Council or the General Assembly (which overtakes the duties of a Council if it fails to reason on the issue) do not depend on their actual findings that some particular State has used force. What suffices is the evidence of a potential threat to peace, so self-defense is taken in its broad meaning as preemptive self-defense.

However, the Charter of the United Nations makes numerous provisions for the possible and actual use of force, i.e. of both *jus ad bellum* and *jus in bello* (Art. 2; Art 33; Art. 37; Art. 51). Article 2 (3), binds members to settle their international disputes in a manner that does not endanger international peace and security and justice (use of force endangers the whole international community). Article 2 (4) is said to be a cornerstone of the Charter (Brierly 1968: 414-415), it explicitly asks all members to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state. Article 2 (4) refers to armed forces. Articles 33 and 37 lay down more definite procedures for settling disputes in a peaceful manner. Article 36 touches upon the topic of justice as one aspect of peace, in referring to the International Court as the ultimate arbiter of international disputes. Article 51 refers to the member's right to individual or collective self-defense. This right is confined within certain limits: the occurrence of an armed attack and approval by the Security Council. However, the text is ambiguous:

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security"

For one, it seems that the words "if an armed attack occurs" contradict Article 2 (4) which approves of self-defense if there is "threat or use of force", but the opening words of Article 51 "nothing in the present Charter shall impair the inherent right of an individual or collective self-defense", suggest that a right to self-defense is a natural right and has priority in the sense that it may be practiced even if there is just a threat in view. Furthermore, the French text of the Charter does not use in Article 51 the conditional, which suggests that the English usage of "if" is in a sense of hypothesis and does not exclude the use of self-defensive war in the myth of threat. To conclude, the Charter leaves the scope of the right to war in cases of self-defense open and the practice of the United Nations does not settle this issue either.

Although intuitively self-defense should have clearer principles than that of intervention, it still leaves a lot of room for political bargaining, especially when in practice societies are not perfectly just and their goals and purposes and potential threats are not clearly stated. However, a right to self-defense must be in certain cases allowed as legitimate grounds for war. How conclusive arguments for specific cases

are is questionable.

It is indisputable that the Peoples do not need to defend themselves from other Peoples and that danger from attack arises only in the world of states; hence, it plays a role in a nonideal theory.

#### 4.2.6. HUMAN RIGHTS

“6. Peoples are to honor human rights.” (LP: 37)

“The General Assembly proclaims this universal declaration of human rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction”.

Preamble of the Charta of United Nations (1945)

#### *Philosophical Interpretation*

“Human rights” as a term is a product of the Enlightenment; it was first used in the French Declaration of Men and of the Citizen (1789), and it became widely used in twentieth century following the Universal Declaration on Human Rights (1948). The concept, however, builds strongly on the concept of natural law and rights present in ancient and scholastic philosophy (Griffin 2007: 9-14). Natural rights are a theologically metaphysical concept: all men are creatures of God, who is a creator of nature and hence there is a part of Divinity in all which accounts for universal respect and which individuals realize through reason. Enlightenment secularized this universality of all men. The common denominator became human reason itself and the power to make one’s own decisions regardless of the possible existence of Divinity, and that called for respect.

In LP, the honor of human rights is a two-fold task. On one hand, it means protection from the violation of human rights and on the other it provides for the undisturbed exercise of these rights. The first aspect may include intervention in a sovereign state, even a military action against the human rights violator. The second aspect means creating the political and social environment that would support the practice and the further development of human rights. The first aspect is superfluous for the world of Peoples; the second, however, is not. Intervention as a means for the protection of human rights does not belong to the ideal, but to normative nonideal theory. Creating favorable conditions for the practice of the ever-growing number of human rights is the role of the ideal theory.



Rawls (§10) explains that in the Law of Peoples a special class of urgent human rights is expressed. Liberal and decent peoples equally condemn the violation of this class of rights. “Proper” human rights are those that correspond to Article 3 to 18 of the Universal Declaration of Human Rights, i.e. right to life, liberty and security of a person; no one should be subjected to torture, degrading treatment or punishment; there should be equality before the law and all are entitled without any discrimination to equal protection before the law; equal protection against any discrimination; freedom of movement and residence within the borders of each state; a right to leave any country, including one’s own, and to return to said country; a right to marry and to create a family, etc.<sup>63</sup>

By choosing to include only 15 of the 30 human rights presented in the Universal Declaration, Rawls seriously truncates the list that has been considered established in liberal states. Many critics objected this (cf. Buchanan 2006; cf. Pogge 2004; cf. Pogge 2006; cf. Beitz 2010; cf. Teson: 1998). The main line of attack is aimed at Rawls’ methodology: if constructivism is to be used for arriving at the principles of global justice, then the representatives of liberal peoples, in the second original position, would not choose a truncated version of human rights. Rawls makes, according to Pogge and Buchanan, unjustified concessions to non-liberal peoples (Buchanan 2006: 150-169; Pogge 2006: 206-226).

However, there are two lines of argument in Rawls’ defense. David L. Reidy proposes one and John

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<sup>63</sup> The rights Rawls chooses to include are, in their simplified versions, the following:

**Art. 3. The Right to Life.** Everyone has the right to life, and to live in freedom and safety.

**Art. 4. No Slavery.** No one has any right to enslave other people.

**Art. 5. No Torture.** No one has any right to hurt or to torture others.

**Art. 6. Everyone Has Human Rights Everywhere in the World.** Everyone is to be recognized as a person before the law.

**Art. 7. Everyone is Equal before the Law.** The law is to treat everyone equally. It shall protect everyone from the discrimination concerning this Declaration.

**Art. 8. Everyone’s Human Rights Are Protected by Law.** Everyone can ask for the law to protect him/her when he/she is not treated fairly.

**Art. 9. No Unfair Detainment.** Everyone is free from arbitrary arrest, detention or exile.

**Art. 10. The Right to Trial.** Trials should be public and organized by independent tribunals.

**Art. 11. Everybody is Always Innocent Until Proven Guilty.** Everyone has the right to be assumed innocent until proven guilty.

**Art. 12. The Right to Privacy.** Everyone has the right to a private life: everyone’s family, home and correspondence should not be disturbed.

**Art. 13. Freedom to Move.** Everyone has the right to move freely within one’s own country and abroad.

**Art. 14. The Right to Seek a Safe Place to Live.** If treated badly in one’s own country, everyone has the right to seek asylum.

**Art. 15. Right to a Nationality.** Everyone has the right to belong to a country.

**Art. 16. Marriage and Family.** Every adult has the right to marry and have a family. Men and women have the same rights when they are married and when they are separated.

**Art. 17. The Right to Your Own Things.** Everyone has the right to own things or share them; these should not be taken away by force.

**Art. 18. Freedom of Thought.** Everyone has the right to believe in what he/she wants to believe, to have a religion, or to change it if so desired.

Tasioulas the other (cf. Reidy 2006; cf. Reidy 2004; cf. Tasioulas 2002). I take both interpretations to be important for my point about Rawls' idea of human rights. Namely, I think that Rawls conflates the two different issues connected to interventionism: The first concerns the problem when is it justified to intervene in a foreign country. The second concerns stating the norms for the ideal theory, i.e. which human rights are to be respected by Peoples? The problems of interventionism can be solved satisfactorily by using the truncated list of human rights as the norm for intervention. This truncated version is justified in cases of intervention because it represents the crux of both liberal and non-liberal thinking. These are the rights that stood from the very origin of liberal countries as something worthy of military battle.

David Reidy argues that Rawls' human rights minimalism is not an accommodation of the values of non-liberal peoples. Liberal peoples, according to Reidy cannot do anything else but choose the truncated list of human rights if they want to be true to their liberal principles. The representatives in the second original position know that they represent liberal peoples but do not know what kind of liberalism is required or on what stage of political development these societies are. Thus it may be that societies are at the very early stage of liberal development, for example at the stage where England or the United States were at the beginning of the nineteenth century. This means that there is no universal suffrage and gender and religious restrictions exist. If one adopts Rawls' truncated version of human rights, according to Reidy, these societies would still participate in the Society of Peoples. This truncated list of human rights would be binding even without an explicit consent. The representatives of the liberal societies in the original position would commit to that. Peoples, according to Reidy, need "to liberalize and democratize in their own way on their own time though their own domestic struggles (...). But once even generically liberal and domestic rights are included among basic human right internationally binding and enforceable regardless of consent or voluntary undertaking, liberalization and democratization become things that may legitimately be forces on states" (Reidy 2006: 180).

Reidy's argument is basically saying that if one inquires into the conditions for self-determination of a society, and if one does it from a liberal point of view, one would end up talking about the constitutional republic that satisfies the minimal conditions of human rights enlisted by Rawls. Non-liberal constitutional republics would also acknowledge these. The problem with this conception is that the Peoples are not liberal and non-liberal societies in the making.<sup>64</sup> They are ideal concepts and Reidy does not recognize that. Liberal Peoples are the societies that we know from TJ or PL, and non-liberal Peoples are those similar to Kazanistan (cf. LP: 75-78). Hence, the representatives of these Peoples

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<sup>64</sup>If we accept Reidy's argument it is also a problem how far back to the origins of liberal theory, i.e. constitutional republics should we go. Rawls says himself that the France of early-modern Europe is not a People, neither was a Germany in the twentieth century, although it was a constitutional republic (LP: 105-6).

would in general agree to a more extensive list of human rights, while the truncated list would serve as a threshold between the ideal and the nonideal. The truncated list of rights lists the rights that need to be fulfilled as a preliminary for the ideal state of affairs, as a preliminary for a world without a war.

Tasioulas recognizes the distinction between the ideal and non-ideal in Rawls' conception of human rights.<sup>65</sup> He charges Rawls with conflating the two and justifies Rawls' choice as a right one only for the non-ideal theory. He realizes that the question Rawls asks is "what would be accepted (as global justice principles, i.e. human rights principles) by representatives of peoples in the second original position, where peoples are fairly situated as free and equal behind a veil of ignorance and accept a criterion of reciprocity constraining the pursuit of their rational interests" (Tasioulas 2002: 383). The identification of ideal standards is a different question altogether than the one regarding the permissibility of intervention or any kind of interference that would forcefully prevent society to change its policy on its own. The second is the standard of justice that has "universal purchase" and hence is a critique of those societies that fail to meet this (Tasioulas 2002: 389). Thus, these are the principles for the nonideal theory, not the ideal standards of conduct. In this sense, Tasioulas has nothing against Rawls' truncated version of human rights but as the standard for intervention and therefore he criticizes Rawls for not giving us real principles.

In a certain sense I think that both Reidy and Tasioulas are right. Tasioulas recognizes that the structure of the argument, i.e. the division to the ideal and nonideal, makes the difference in the substance of the argument. And Reidy for recognizing that truncated list of human rights is the crux for liberal societies and is the starting point for political proliferation, i.e. self-determination.

My point is that the idea of human rights the way Rawls presents it accounts for the right to (military) intervention (when serious violation is underway). In this form these rights are an important part of the nonideal theory, a preliminary for the ideal state of affairs. They are the crux of liberal ideology. It is these rights that needed to be settled first in order for liberal ideas to develop to the level we know them now.<sup>66</sup> Rawls' Peoples are not liberal societies at the very beginning of their liberalization; nor are his

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<sup>65</sup> Tasioulas thinks that Rawls conflates five different questions, some pertaining to the ideal and some to the non-ideal theory:

1. What is the list of human rights that ideally (but within the bounds of realism) should be recognized?
  2. Which human rights norms ought ideally to find expression in public international law (or municipal law)?
  3. Which human rights norms ought to find expression in public international law (or municipal law) at any given time in its development?
  4. Which human rights exist in current public international law (or municipal law)?
  5. What are the morally or legally justified responses to violations of norms coming under 1,2,3 and 4 above?
- (Tasioulas 2002: 385).

My suggested four-fold distinction to the normative and descriptive ideal and respectively nonideal theory can also account for the different areas Tasioulas is trying to point to: 1. Is a part of the descriptive ideal theory; 2. of normative ideal theory 3. of normative nonideal theory 4. of descriptive non-ideal theory and 5. Depends on which of the questions it answers.

<sup>66</sup> When I say that these rights need to be settled first, I mean that they have causal, not logical, priority. It is the ideal theory

decent societies, those that are just in the making. Ideally, there is a larger scope of human rights they would want to acknowledge. These can be parochial (cf. Scanlon: 2006). The truncated version of human rights is a precondition for self-determination and for the enactment of the larger list of human rights.

### *Legal Interpretation*

During the follow-up of the 1945 peace treaty, the states of the world formed the institutions of the United Nations. The Charter of the United Nations mentions human rights as one of the purposes of the formation of the United Nations: “to save succeeding generations from the scourge of war, reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small” (Preamble UNC). The Charta refers to human rights but does not define them. The defining element was given by the Universal Declaration of Human Rights (1948) through examples, i.e. through a list of rights that are taken to be fundamental for all humans. This document was fortified by two different Covenants: the International Covenant on Civil and the Political Rights and International Covenant on Economic, Social and Cultural Right (1966). All three documents are referred to as the International Bill of Rights and are said to form three different generations of human rights.

There is a conceptual connection between different generations of human rights and the three mottos of French Revolution: freedom, equality and fraternity. Karel Vasak, French jurist and a former director of the United Nations Educational, Scientific and Cultural Organization (UNESCO) Division of Human Rights and Peace, pointed out this connection.<sup>67</sup> So-called first-generation rights are to protect the individual of arbitrary behavior of others; these rights pertain to negative freedoms of the person. They are more freedoms *from*, than they are rights *to* (Articles 3 to 22, of UDHR). They have been elaborated extensively in the International Covenant for the Civil and Political Rights. Second-generation rights are positive freedoms, allowing people to make demands on their states. They fall under the catchphrase of “equality”. These demands were treated in the UDHR (Art. 22 -27) but are found in their extended version in the International Covenant for Economic, Social and Cultural Rights. Finally, third-generation

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which is logically prior.

<sup>67</sup>Vasak, Karel, “Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights”, UNESCO COURIER 30: 11, Paris: United Nations Educational, Scientific, and Cultural Organization, Nov. 1977.

rights are solidarity rights (not yet mentioned as such in the UDHR). These, according to Vasek, are underlined by the concept of brotherhood (already stressed in the Art. 1 of UNHR) and are, though intermediately connected to individuals, collective in character. They emerged as a response to global interconnectedness and interdependence. New global problems emerged and single States working alone could not be protective enough of their citizens' needs. Vasek mentions five categories of these third-generation rights: the right to development, the right to peace, the right to environment, the right to the ownership of the common heritage of humankind, and the right to communication. His point is that challenges such as poverty, terrorism, global warming, and preservation of monuments from deterioration, etc. can only be responded to collectively, through the solid global initiative of all the social actors: individuals, groups, peoples, states. They all have equal obligation in achieving a common goal.

Three generations of human rights are seen as the normative standard for domestic and international institutions. These have different purposes and respond to different problems and human needs. Depending on the purpose of the institution, different human rights are deployed as its standard, e.g. labor institution would have second generation human rights as its standard; environmental organizations third generation; institutions for peace and security first and third, etc. All of the mentioned rights are recorded in the resolutions not treaties; hence they are not directly legally binding but have, in the meantime, become a part of international customary law (cf. Heyden, ed. 2004: 369-375).

Not all violations of human right allow for the intervention of other political institutions or regimes into the affairs of the violator. Human rights as standards account for the legitimacy of an institution. Their violation makes the institution *per se* on a domestic or international scene illegitimate. There is thus no legal document that directly connects human rights protection with force, i.e. military, intervention. The collective use of force that needs to be approved by the Security Council (Article 39 UNC) is connected to threats of peace and security, so human rights violations can only be subsumed under it secondarily. Only the very truncated list of human rights of first generation allows for intervention under international custom: mass-murders, genocide, ethnic cleansing, systematic killing and raping. Hence these are more case-sensitive exceptions rather than general rules, they are done in exceptional, well-proofed situations and as already stated only in the cases of very few particular human rights violations (cf. Chwaszcza 2007: 109-131).

Rawls' argument is therefore in line with the international legal argument; it does not give us anything more. The point being that the list of human rights that serve as a criterion of legitimacy for different institutions is considerably larger than the list of those rights that are considered to be a legitimate

ground for forceful intervention. Respect of these short-listed rights is not the moral standard of an ideal theory but for forceful intervention on behalf of human rights. As such, a short list is a measure of normative nonideal theory.

#### 4.2.7. CONDUCT OF WAR

“5. Peoples are to observe certain specified restrictions in the conduct of war” (LP: 37)

“The Purposes of the United Nations are:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;”

Art. 1 (1) of the Charta of United Nations (1945)

The conduct of the parties at war must encompass all the previous “principles”. It should treat everyone decently, according to the circumstance. Rawls gives also a theoretical account on *jus in bello*. He underlines six principles:

1. The aim of a just war is a just and lasting peace, especially with the people’s present enemy.
2. Well-ordered peoples do not wage wars against each other.
3. In the conduct of war, well-ordered peoples must carefully distinguish three groups: the outlaw state’s leaders and officials, its soldiers, and its civilian population.
4. Well-ordered peoples must respect, so far as possible, the human rights of the members of the other side, both civilians and soldiers.
5. Well-ordered peoples are by their actions and proclamations to foreshadow during the war the kind of peace they aim for and the kind of relations they seek.
6. Practical means-end reasoning must always have a restricted role in judging the appropriateness of an action or policy. (LP: 94-97)

These are largely familiar from Immanuel Kant’s sketch, Perpetual Peace. The aim of war is said to be just and lasting peace. Thus Rawls is set on finding the principles of the violent conduct that would lead to durable peace out of the right reasons, i.e. not out of the balance-of-powers. When concluding peace, all the parties must think it to be the right solution and all need to be satisfied with their position. In order for this to be achieved war has to have educative purpose. Human rights need to be respected as much as possible in their most extended system; the responsibility for the causes and conduct of

war need to be split between the political leaders and the civilians, and only first are to be held accountable. Consequently, actions of war are to be conducted in such a manner as to disadvantage leadership while protecting civilians as much as possible. Furthermore, even in times of war public reason needs to be practiced, in the sense that the aims and reasons for war need to be clearly and publically stated.

Rawls is explicit on the fact that between well-ordered peoples there would be no war. Provisions that are to regulate the reasons for the possible war and the conduct in war are directed to yet well-ordered peoples. Hence, it is a valuable guideline for the conduct of states if they have as their aim their own well-orderedness and durable peace.

### *Legal Interpretation*

In defending the acts of Milo in an internal armed conflict in Rome, Cicero pleaded that the laws are silent in arms “inter arma silent enim leges” (Cicero 4.11). It is still questionable whether law has any force in regulating behavior in exceptional, anarchic and violent situation as wars. This skepticism is fortified with the fact that all international law prohibits armed conflicts in any case. Hence the problem with the law in war is how to restrict human behavior in a situation which itself neglects the law; or how to restrict human behavior when individual or collective survival is endangered.

The law of war is usually known as International Humanitarian Law (IHL). As the name says its focal-point is human rights protection. Modern International Humanitarian Law (IHL) is said to have been created in 1864 when the first Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field was adopted.<sup>68</sup> The basic purpose of the international law in war or international humanitarian law is to regulate a common understanding of violent acts during the war and to establish that human beings, no matter whether they are enemies or allies, deserve protection. In the report of the International Committee of the Red Cross, *How does Law Protect in War?* (2011), we read that as early as 3000 BC, there existed rules protecting certain categories of victims of armed conflicts and regulations limiting or prohibiting the use of certain means and methods of warfare (Sassòli, Bouvier, Quintin 2011: §3). However, the purpose of these rules was not the protection of some humanitarian cause but an economic gain. The rules included, for example, the prohibition to poison wells or to kill

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<sup>68</sup> The first convention was followed by three more: Second Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1906; Third Convention relative to the Treatment of Prisoners of War, 1929; Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949. All four together are referred to simply as the Geneva Convention. The 1949 conventions have been modified with three amendment protocols: First relating to the Protection of Victims of International Armed Conflicts (1977); second relating to the Protection of Victims of Non-International Armed Conflicts (1977); third relating to the Adoption of an Additional Distinctive Emblem (2005). To the international Humanitarian Law, also count the two Hague Conventions (1899 and 1907) which mostly dealt with the permissible and impermissible violence in war.

prisoners of war. The former's goal was the exploitation of conquered territories, while the latter's was the exploitation of prisoners as slaves. Nevertheless, the effect was humanitarian and was present in non-European societies, e.g. African societies, as well. The triggering point for the modern IHL dates back to the battle of Solferino, a battle in northern Italy between French, Italian and Austrian forces in 1859. A Geneva businessman, Henry Dunant, horrified by the suffering of the soldiers published a short book, *A Memory of Solferino* (1862), where he delineates the horrors of the war but also gives his recommendations on how to deal with the possibility of similar conflicts in the future. He invited States "to formulate some international principle, sanctioned by a Convention inviolate in character" and giving legal protection to wounded soldiers in the field (Sassòli, Bouvier, Quintin 2011: §3, 3).

Dunant's proposal found a positive echo in Europe. A few months after the publication of his book, a small committee, the precursor of the International Committee of the Red Cross, was founded in Geneva. Soon, the committee persuaded the Swiss Government to convene a diplomatic conference. This conference was held in Geneva in August 1864 and adopted the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. For the first time, States agreed—in an international treaty open to universal ratification – to limit their own power in favor of the individual; in addition, for the first time, war was subject to written, general law. Ever since there have been a growing number of treaties, battlefield caudexes. The development of modern humanitarian law, or law of war conduct, has evolved along the following two lines:

- a) Categorization of victims protected by the humanitarian law
- b) Categorization of situations protected by humanitarian law (not just international but also national conflicts fall under it)

The second line was then further elaborated in the Hague Law, the provisions of which relate to limitations or prohibitions of specific means and methods of warfare. These two branches of law were merged with the adoption of Protocols II and I in 1977.

Meanwhile, international law in war grew into a large bulk of battlefield codes and unilateral or multilateral treaties and conventions. These however do not differ from what Rawls, or even Kant suggested. Rawls' principles hence do not give a direction for solving the paradoxes of international law in war—it just affirms its importance.



#### 4.2.8. ASSISTANCE

"8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having just, decent, political and social institutions."(LP: 37)

"(e) Each State has a right to freely choose and develop political, social, economic and cultural systems."

*Declaration* 2625

(1970)

##### *Philosophical Interpretation*

Principle 8 is the novelty of LP, its title is "the duty of assistance", and requires positive action which accommodates burdened societies in their struggle for political decency. In other words, burdened societies are to be helped to form viable political institutions. It is explained that the duty to assist is owed, by peoples, only to burdened societies.<sup>69</sup> It is hence a clear case of a relational duty between decent or liberal societies and burdened societies. This duty is also owed to both liberal and decent societies that tend to fall back on the burdened state. Positive duties to which liberal and decent societies are obliged are precisely defined in advance. The assistance has a clear "goal" or "aim": the formation of decent social and political institutions. Once the goal is achieved no further assistance is required, the duties dissolve or turn to voluntary benevolence. It is synthetic to the definition of Peoples and explains how moral nature enfolds in positive duties in practice. Here the question is in what sense can this principle be normative, or simply expedient, to world here and now. Can it guide international law, and if yes what are its particular rules?

In selecting the duty of assistance for the eighth principle, Rawls is breaking the analogy with the domestic case since he does not deploy the difference principle on the global level. He justifies his choice by postulating the necessity of self-determination of societies. Any global difference principle, i.e. redistribution of goods and services would first demand the central organ of distribution and second would impose a certain kind of uniformed distribution on everybody. This would cut the societies off from independent decision making and take the responsibilities for their development from them. Rawls is convinced that the level of development and satisfaction in society depends on each one finding the fitting political institutions for itself. Political institutions express society's conception of justice, and each society needs to develop this conception on its own. Only then can political institutions be stable. Well-ordered societies may support developing ones in their effort in finding their own conceptions and in

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<sup>69</sup> Burdened societies are those that are not aggressive, do respect human rights and do have a formed conception of justice. However, they are being hindered by natural or man-made catastrophes, or historical misgivings or lack of know-how to deploy their conceptions of justice into a viable government (LP: § 15).

building it into their institutions. However, well-ordered societies should not enforce a foreign conception of justice or institutional arrangements. Deploying the obligatory difference principle on a world scale would in a certain sense infringe on a society's independence and self-determination process. Societies are and should be responsible for their own destiny. This is also why Rawls' duty of assistance has a "cut-off" point. As soon as the "mission" of helping other societies to form a viable government is fulfilled, the help stops.

Rawls gives two quasi-empirical examples to justify the usage of difference principle (LP: 106-111). The first example looks at two societies, A and B, which have more or less the same amount of natural resources, size and population. Society A decides to industrialize, while society B stays agricultural. After some years, society A is twice as rich as society B. Is society A obliged to transfer part of its wealth to society B? The advocates of the global difference principle would argue for it; Rawls, on the other hand, is against it.

The second example looks again at two societies, A and B, which are on fairly the same development level. The birth rate in both societies is high and both societies have established that this is the reason for the slow economic growth. Society A decides to engage women more in the work force. After a period, the birth rate in the society A had dropped and economic growth had risen due to this fact. Again, the question is whether society A is obliged to transfer its wealth to society B. Rawls argues no, citing as his basis the self-determination of societies and self-responsibility for its decisions and its people. It may also be the case that society B, the less wealthy society, has a political and social culture that does not cherish wealth. Transfer would mean imposing a foreign model of living on the society. Both examples should show that internal policies make all the difference in the level of wealth of societies.

The duty of assistance triggered much critique. The so-called cosmopolitan-philosophers, e.g. Thomas Pogge, Charles Beitz, Kok Chor-Tan, Simon Caney and many others, expected Rawls to deploy his difference principle on the global plane. Anything less than the global difference principle is, according to these philosophers, simply not egalitarian enough and does not secure respect due to each individual in the world no matter to which specific country he/she belongs.

One of the most vehement critiques of Rawls' conception of global justice is Thomas Pogge (cf. Pogge 1989; cf. Pogge 2002; cf. Pogge 2004; cf. Pogge 2006). Pogge suggested global resource dividend as a redistribution principle (GRD) for global justice theory. GRD is something like a difference principle for the world at large (cf. § 1.2.). Pogge postulated GRD even before Rawls developed his own theory (cf. Pogge 1989, cf. § 1.3.). Pogge objects to Rawls' refusal to use global difference principle and explains

this by citing Rawls' one-sided accommodation of non-liberal societies needs. Rawls' international theory, in Pogge's view, rejects normative individualism of any kind because it cannot accommodate hierarchical societies and instead is based on "explanatory nationalism", a doctrine that societies are responsible for their own destinies. According to Pogge, the global economic order of Rawls' utopia is shaped by "free bargaining" without any principles that could constrain stronger societies to shape the terms of international interaction in their favor.

Pogge argues that the well-being of a country cannot have only local causes. He analyzes the cases of poor countries and concludes that rich countries and the global institutional arrangements they design and impose contribute to poor countries' deprivation. Rich countries do not shy away from negotiating trade agreements with unlawful rulers or even in encouraging civil wars or opportunistic military interventions. According to Pogge, the global order is gravely unjust and "those who cooperate in its imposition are harming those whose human rights avoidably remain unfulfilled" (Pogge 2006: 217). Pogge sees no reason why the parties in the second original position would not consider an alternative to the Rawlsian Law of Peoples that would hold "explanatory nationalism" thesis as false and instead of "assistance" principle support some kind of global difference principle.

However, it is not true that Rawls does not realize the gravity of current injustices in the world. Rawls says: "If a global principle of distributive justice for the Law of Peoples is meant to apply to our world as it is with its extreme injustices, crippling poverty, and inequalities, its appeal is understandable." (LP: 117) This quote is actually saying that in the real world there is certainly a need for some sort of distributive principle. The principle Rawls presents is the principle to be valid between Peoples and the societies that are about to become Peoples. It is the insurance for Peoples against possible atrocities that can befall them. Hence, the assistance is in the manner Peoples would want to be assisted in the event they fall victim to misfortune.

Rawls however, creates confusion by insisting that the duty of assistance is the principle of nonideal theory; if so, it should be applicable to the nonideal circumstances, i.e. to our world. As already explained in § 2.4, each nonideal theory presupposes the ideal one, hence Rawls' duty of assistance would have to be guided by some ideal principle or some ideal relation between ideal societies. In Rawls there is no ideal principle that can be seen as a guideline for the duty of assistance as the nonideal one, i.e. the duty of assistance cannot be derived from any of the principles that are said to be ideal. Hence it is either itself an ideal principle or the ideal principles are missing.

Pogge's argument regarding the Law of Peoples about how rich countries misuse global institutions, or even the objection about the neglect of individualism, fails on a level of descriptive ideal theory on the global level. If Rawls had been more precise about how the global institutions were to work and had

they to have flows of current global institutions, then Pogge's objection would stand. It is, however, hardly conscionable that the statesmen and rulers of decent societies would be prone to misusing global institutions so that they would harm disadvantaged societies. Pogge's complaint is directed towards contemporary politicians and politics and requires normative theory for real world affairs.

Pogge's line of reasoning for a global theory of justice takes place on the level of our considered judgments about the current state of our world and thus searches for principles that would be normative for a contemporary applicable global theory of justice and therefore fails to see that Rawls' theory is of a larger scope. Pogge's dilemma is how to prevent the existing, and obviously unreasonable, affluent countries' misuse of global institutions, whereas Rawls asks, "what would a world of well-ordered societies look like?" Rawls wants to go beyond the limits of what is possible here and now and in that way is realistically utopian; he wants to give us principles for the ideal state of affairs; he wants to describe an ideal which would then serve as a guide line for our world. However, he fails on that.

My argument is that Rawls does not present us with a truly ideal system of principles. All he gives us are the interpretations of some ideal principles. The duty of assistance is also an interpretation of what positive duties should look like. It is the simplest case of positive duties where all societies have developed conceptions of justice and the only problems are external conditions. It is the duty that develops between developed countries. This interpretation of positive duties has something of an incurrance character. Namely, the Peoples need to protect themselves from possible atrocities. The way they treat burdened societies is the way they would want to be treated if some natural or man-made catastrophe befell them. It is thus imaginable that positive duties be interpreted in a more humanitarian way. It would then create a link between developed and non-developed societies. Non-developed societies need to first have their basic needs fulfilled and then they need to develop their own conception of justice. Thereby they need active assistance that encompasses more than just help in forming viable government.

I will elaborate on the missing ideal principle, which accounts for both aspects of positive duties and that I will call the principle of solidarity, at length in Chapters 5 and 6. Here it suffices to note that this principle accounts for the behavior between societies that goes beyond that of a rationally calculated commercial gain, or tit-for-tat principle, and also beyond necessary humanitarian help. As such, this principle guides the future of the international relations.

### *Legal Interpretation*

There are no treaties of international law establishing positive duties between societies, i.e. no explicit set obligations of societies towards each other. However, positive duties or rather claim (or relations)

rights to be helped or assisted have been declared through numerous resolutions. These fall under two categories: rights to development and rights to explicitly economic assistance.

In 1986, the General Assembly passed Resolution 41/128 adopting the Declaration on the Right to Development. The language of this document is very general, it states that “the right to development is inalienable human right” (Art.1), that human persons are central subjects to development and have responsibility for development (Art.2) but that “states have the primary responsibility for the creation of national and international conditions favorable to the realization of the right to development”(Art.3) and further that sustained action is needed to promote a rapid development of developing countries (Art.4). Articles 6 through 8 have a recommendable, not imperative, character. Hence, States should cooperate (Art.6), promote the establishment of international peace (Art.7) and undertake at the national level all the necessary measures for the realization of the right to development. Now, this whole document may be read as an echo of establishing the New International Economic Order, a set of proposals put down by the developing countries in the 1970s in order to replace the Bretton Woods System. By explicitly spelling out their right to development, developing countries were hoping to enforce by law the corresponding duty of developed countries to assist them. Interestingly enough, the biggest monetary donor in terms of assistance help, the United States voted against Declaration on the Right to Development. The explanation was that the document was “imprecise and confusing”<sup>70</sup> and did not explain how “development” is done, i.e. did not mention monetary transfers from developed to developing countries. The abstaining votes included four Nordic countries (Denmark, Sweden, Norway, the Netherlands), Japan, United Kingdom and Germany. Their explanation was that development assistance could not be seen as an obligation and that more attention should be given to securing individual human rights rather than the rights of peoples.

Parallel to these developments, the International Organization for Economic Cooperation and Development (OECD) celebrated the year of Solidarity: in 1981, its year- report was titled “Solidarity Co-operation” with the record monetary transfer. OECD’s projects were financed by the donations of member countries, which all belong to the developed world (with USA as the biggest donor at 25%). Many governments of developed countries have formed their specialized agencies for assistance-help e.g. USAID (American agency) or CIDA (Canadian) or ADAB (Australian). Some have made provisions in order to incorporate the assistance-help as a constant part of their domestic expenses e.g. in the Australian Federal Law of 1974, or in Swiss Federal Law of 1976; Norway has exercised a specific tax for helping developing countries since 1963; and Denmark uses Coffee Tax for that purpose (Rich 1995: 25-39). The point is that the development of poor regions is recognized as a significant necessity

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<sup>70</sup> UN Doc A/C.3/41/SR.61.42(1986)

and assistance-help is practiced. There are enough international and national organizations to make it happen without the right to development being universally enforced as a human right.

Developments in international law show that the necessity for the establishment of legally obliged positive duties exists. Their form is however still unsettled. The clarification of this should be the task of political philosophy and the ideal theory of global justice.

#### 4.3. CONCLUSION

To sum up: Here I presented and elaborated on Rawls' principles of global justice. I analyzed "the principles" of global justice offered by Rawls, as well as those offered by international law. I hope to have been clear enough on the similarity of the principles, both in their formulations as well as in their consequences, i.e. in their practical, legal or moral implementation. This affirms my opening thesis that Rawls' principles are principles for the normative nonideal theory but not principles for the ideal one. Rawls is actually conflating the two. His methodology—constructivism with well-ordered peoples as its unit—promises to deliver truly ideal principles that were then to guide the nonideal ones. However, the theory is mostly left on the nonideal level. It points to the preconditions, which need to be fulfilled in order for the world for Peoples to emerge.

The first principle gives us the characteristics of Peoples: free and independent. The second principle says that the Peoples are committed to mutual cooperation through treaties and undertakings. The third principle talks about the consequences a commitment to cooperation will legally have: formal, not substantial, equality. The fourth principle demands non-intervention and is clearly a surplus in the ideal theory. The fifth talks about the natural right to self-defense and once again stresses the nature of the peoples as peaceful and not absolutely sovereign. The sixth principle of human rights respect is also a surplus among well-ordered societies. The seventh falls under the domain of the sixth, and the eighth principle envisions some positive duties which societies owe each other.

What we learn from these principles about the possible behavior of the Peoples is that the peoples are ready to conclude treaties as equal parties, free and independent and well-ordered. As such, they see some benefit in joining a certain treaty. On the other hand, the parties need to protect human rights at all times. However, to stress human rights protection as an ideal principle is useful for the provisions for the normative nonideal theory that deals with the concrete human rights violations.

The principles presented by Rawls are preconditions that need to be fulfilled in order for a society to qualify as a People and a member of a Society of Peoples; they do not correspond to the first principles

for the Peoples. They are more of the interpretations, one possible interpretation of the first principles for the Peoples. In my view, it is better to call these alleged principles rules of the Law of Peoples.

It is not a problem *per se* if a certain theory shows us what to do in order to achieve some state of affairs; however, that desirable state of affairs then needs to be well-defined. In Rawls' conception it is not. His theory misses on truly ideal principles that are then to account for the normative nonideal presented here. This problem will be taken up in the next chapter. There I will try to complete Rawls' constructivist procedure: to present the parties in the original position with alternatives and to reason by comparison.

## CHAPTER FIVE

### THE PRINCIPLES OF THE LAW OF PEOPLES: A RESTATEMENT

In choosing the principles for domestic justice, Rawls' parties in the so-called first original position are faced with the choice of different theories, e.g. utilitarianism, perfectionism, intuitionism, rational egoism, and finally Rawlsian justice as fairness. After reconsidering the alternatives, the parties choose Rawls' two principles, i.e. his idea of justice as fairness, as the best choice under the conditions of reasonable ignorance, i.e. under the veil of ignorance. Similarly to the domestic case it is to be expected that the parties in the so-called second original position are also faced with the alternatives. This, however, does not happen. Rawls presents us straight away with the eight principles that proved to be successful in the past and asserts that they are to be successful in the future; hence, it is reasonable and rational for parties in the second original position to accept them. In doing this, Rawls makes a methodological mistake. He uses explicitly inductive conclusions from factual political life in order to justify the choice of principles for the ideal theory of international relations. The principles of justice for the domestic case were selected from conditions of the first original position. The method is quasi-deduction, since the list of alternatives is presented to the parties and the original position then works as a filter. Rawls argues that if his argument were correct, any additional alternative conception of justice that may be presented to the parties in the first original position would yield to the same result.<sup>71</sup> If Rawls is serious about the international case being an extension of the domestic one, then the principles of global justice need also to be selected from the original position. This means that the parties also need to be presented with alternatives. In this chapter I will establish what a deductive argument for the principles of global justice might look like. Thus, I will supplement Rawls' theory by presenting the parties with possible alternatives and then argue for the one that, in my view should have been Rawls'. The chapter is a restatement of Rawls' argument.

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<sup>71</sup>Rawls is explicit that the argument out of the original position be deductive though he is aware that the deduction cannot be perfect but rather intuitive. This means it depends on the set-up of the original position. However, once set, or laid out and approved by the readers of Rawls's work, it is only the conditions of the original position that may be used to decide upon the principles of justice. As Rawls states: "Our aim is to show that the selection of the two principles is based on the premises explicitly set out in that description and not our further psychological or other suppositions. Otherwise the original position does not keep track of our assumptions and we do not know which ones we have to justify" (JF: 133; See also JF: 82)



## 5.1. ORIGINAL POSITION AND THE CIRCUMSTANCES OF JUSTICE

### *Circumstances of the Justice-Domestic Case*

By circumstances of justice Rawls intends normal conditions under which human cooperation is both possible and necessary. It is a matter of fact that society is marked by conflict as well as by identity of interests (TJ: 126-130). People's interests are identical insofar that they realize that social cooperation makes a better life for all possible. Living solely by one's own efforts cannot yield prosperous results. However, the interests of individuals conflict since each prefers a larger, rather than a lesser share of the benefits produced by their collaboration. Cooperation and conflict both arise under objective and subjective circumstances. Objective circumstances are facts of life: people live in the same territory; they have similar mental and physical powers; they are vulnerable to attack; and they all live under the condition of moderate scarcity, i.e. there are not enough goods for everybody's expectations to be fully fulfilled. Subjective circumstances, i.e. the conditions that concern each individual separately are also important. These say that all have similar needs and interests (or complementary); each has his/her own life plans and each has no interest in one another's interest. If these circumstances, both objective and subjective, did not exist there would be no need for any talk about justice.

In order for social institutions to deal with these circumstances in a just manner, they need to be arranged according to just principles. These are gained through a just procedure. In order for a purely just procedure to take place, Rawls introduces the thought experiment: a hypothetical contract, i.e. original position with the device of the veil of ignorance. The procedure takes objective and subjective circumstances of justice in their formal, but not their substantive, value, e.g. parties in the original position know that they live in the same territory, but do not know which; or they know that they have plans in life but do not know what these plans are. However, parties do have general knowledge on geography and on economic and psychological laws. Bracketing of substantive, personal information is the function of the veil of ignorance, an element of the original position. It makes the entire procedure impartial thereby producing a fair result.

### *Argument from the First Original Position*

The original position is a device of representation, and as such it models "what we regard here and now- as fair conditions under which the representatives of citizens, viewed solely as free and equal persons, are to agree to the fair terms of social cooperation (as expressed by principles of justice) whereby the basic structure is to be regulated." (JF: 80). Furthermore, the original position models

again what we, here and now, as readers of Rawls' work consider as reasonable restrictions on the party's knowledge (JF: 80). It also helps keep track of our assumptions. It helps see their implications more easily. (JF: 81). Let us look at the set-up of the original position.

There are three types of constraints that influence the decisions of parties in the original position: constraint on the type of theory the parties are looking for; constraint on the knowledge they have; and constraints on their own psychological capacities they use for their decision-making.

First, the parties seek principles of justice that need to be general and universal to be able to order conflicting claims and be final. Any theory that does not provide these will be discredited right away (cf. §2.1.).

Parties are to choose principles for the basic structure of society, knowing only the formal circumstances of justice, i.e. parties are under the veil of ignorance. The knowledge they have is general knowledge about geography, society, laws of psychology and circumstances of justice. No particular knowledge about their status in the society, age, race, etc., disturbs the impartiality of the decision.

Furthermore, parties are seen as continuing persons, i.e. family heads, in order to escape possible selfish preferences towards the present generation, whatever these may be. Parties are rational; they want as many goods as they can get for themselves in order to fulfill their idea of a good life, again, whatever this may be. However, they are mutually disinterested, i.e. not envious. They are aware of the necessity of cooperation and ready to comply. Parties can be anyone, any reader of Rawls' work, who at some point in time decides to think about just social institutions and is therefore willing to try the thought experiment. To these parties, the alternative conceptions of justice are presented. The alternatives are the conceptions of justice that are to be found in the history of moral thought.

Rawls takes a short list of the most important traditional conceptions of justice and makes a comparison in pairs, two at a time. The reasons for the one or the other must be derived solely from the conditions or the knowledge the parties have in the original position. This set up needs to be approved by us, the readers of Rawls' work.

Rawls maintains that under the circumstances of the original position, parties would choose the theory of justice that provides not only the best solution for the worst case scenario but the one that is also a practically possible solution. This means that parties reflect on the conceptions of justice and choose the one that is the most desirable, were they to occupy the place of the least advantaged members of the society. They also favor the conception for which they are certain, as much as they can be, that they will be carrying it out, i.e. would be willingly complying to it, once the veil lifts.

The alternatives are different types of utilitarianism, intuitionism and egoism. Intuitionism and egoism produce principles that do not pass the test of universality and generality and are hard to be publicly justified and hence are not adequate candidates for a theory of justice. These theories are discredited at the beginning of the process. Rawls undertakes an extensive elaboration on the utilitarian conception since it is one of the most influential moral doctrines (cf. TJ: §§ 27-28). A utilitarian conception, in whatever form we take it—classical utilitarianism, average utilitarianism, restricted utilitarianism etc. — suggests that one part of the population needs to sacrifice some amount of their personal well-being for the well-being of others, all for the sake of some pre-established final value, e.g. greatest over-all amount of happiness in the society; or the greatest average happiness of each citizen, etc.<sup>72</sup>

When parties in the original position compare the alternatives under the conditions I just described, they first use the method of maximin, and then they consider the ideas of publicity, reciprocity and stability.

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<sup>72</sup>Rawls' two principles read: First, each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others. Second, social and economic inequalities are to be arranged so that: a) they are attached to the offices and positions open to all under conditions of fair equality of opportunity; b) they are to be of the greatest benefit to the least-advantaged members of society (the difference principle) (cf. TJ: 302; PL: 5-6; cf. § 1.1.2.).

Utilitarian principle: the society is rightly ordered, and therefore just, when its major institutions are arranged so as to achieve the greatest net balance of satisfaction summed over all the individuals belonging to it (TJ: 22). The principle of average utility directs the society to maximize not the total but the average utility (per capita) (TJ: 162).

*Maximin*: “The maximin rule tells us to rank alternatives by their worst possible outcomes: we are to adopt the alternative the worst outcome of which is superior to the worst outcome of the others” (TJ: 152-153).

*Publicity*: “(i) The first level is the mutual recognition by citizens of the principles of justice together with the public knowledge (or reasonable belief) that the institutions of the basic structure actually satisfy these principles.

(ii) The second level is the mutual recognition by citizens of the general facts on the basis of which the parties in the original position select those principles (...).

(iii) The third level is the mutual recognition of the complete justification of justice as fairness in its own terms. That is, citizens know their justification is fully as you and I do who are working out that view (...)” (JF: 121).

*Reciprocity*: “...the idea of reciprocity lies between the idea of impartiality, which is altruistic (being moved by the general good), and the idea of mutual advantage understood as everyone’s being advantaged with respect to each person’s present or expected future situation as things are” (PL: 17).

*Stability*: “...in order to be stable, a political conception of justice must generate its own support and the institutions to which it leads must be self-enforcing, at least under reasonable conditions...This means that those who grew up in the well-ordered society in which that conception is realized normally develop ways of thought and judgment, as well as dispositions and sentiments, that lead them to support the political conception for its own sake: its ideals and principles are seen to specify good reasons. Citizens accept existing institutions as just and usually have no desire either to violate or to renegotiate the terms of social cooperation, given their present and prospective social position” (JF: 125).

Maximin is a natural form of reasoning under uncertainty: the *nomuenal*-selves, i.e. the parties in the original position are considering what would be the best possible option for the society they will end up living in, not knowing the place they occupy in it. They choose Rawls’ two principles because they give the best options to the least advantaged, by securing equal most extensive amount of liberties to all. This means that all would be equally protected, no matter what contingencies of life may befall them. Utilitarianism cannot offer this.

Once the principle of equal liberties is determined, the parties ask how to best secure economic advantages for the least advantaged. The Maximin argument provides a justification for the difference principle but it also provides a justification for the principle of restricted utility<sup>73</sup>. Hence, in order to decide which principle to adopt the parties use the conditions of publicity, reciprocity, and stability. The parties think of themselves as citizens of a well-ordered society and contemplate what arrangement they could tolerate without resentment. In other words, there must be a “high likelihood that real persons, given human nature and general facts about societies, can also agree and act on the same principles, and that a society structured by these principles is feasible and can endure” (Freeman 2008: 184).

Thus, a publicity argument says that the regulative principles of justice need to be publically known to all members of society; as such they are the basis for applying the laws and ultimate justification for the basic structure of society. Publicity is also very important for the idea of self-respect, and society should provide social conditions for it. Rawls’ two principles achieve this. They protect equal basic liberties and fair opportunities and secure material well-being and respect for all citizens by treating them all equally. The utility principle does not. Under these conditions, Rawls’ principles of justice fare better than the principles of utility. Public knowledge of utility principles would trigger the worst off to protest or at least not to comply willingly with the system.

The idea of stability evokes once again the idea of moral learning: those who grow up in a well-ordered society will develop practical and theoretical attitudes that support the stability of the system. After a while this support is conferred to the system itself and not necessarily to the self-interest that might have been the original incentive.

Finally, it is reasonable to think that one would want to live in the society in which terms of cooperation are such that everyone benefits, while knowing that all others benefit as well. This is the condition of reciprocity. They cooperate with others on these terms as equal partners. This is a condition that can clearly be fulfilled by Rawls’ principles but not by those of the utilitarian justice.

After what has been said, it is clear how Rawls makes a quasi-deductive argument for his two principles using only the elements of the original position, hence reasoning impartially.

### *Reflective Equilibrium*

The tool we use to mediate between ideal and real world is the so-called reflective equilibrium. It symbolizes the meta-communication between the author and his readers as citizens of a non-ideal

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<sup>73</sup> Restricted utility advocates, on one hand, a guaranteed social minimum to everyone while on the other maximization of average utility (cf. JF: § 34).

world. By going back and forth in our thoughts, between the principles and our considered judgments,<sup>74</sup> we decide first on a fair strategy that should lead to the full description of an ideal and second on the ideal theory itself.

Employing this method of meta-communication, we create the original position as a device of representation, and all of its conditions. We use the reflective equilibrium to affirm the fairness of the original position. The parties in the original position utilize the same method to affirm the principles of justice, while the same goes for the citizens of the well-ordered society that we envisioned. When a reflective equilibrium is reached, the theory is considered justified, though not indefinitely. Reflection is constantly in action. Both, considered judgments and the principles, are equally changeable.

#### *Circumstances of Justice Beyond the Domestic Society*

Since Rawls' idea is to extend the concept of justice for a domestic society on the world at large, one needs to be clear about the preconditions. As in the domestic case, there are certain objective and subjective circumstances of justice that make the talk about justice necessary. Under objective circumstances Rawls maintains that there are different societies with different political, social and cultural constitutions, i.e. there is a fact of reasonable pluralism; they are all vulnerable to attacks, i.e. wars and to unfavorable natural conditions such as catastrophes and diseases; they organize different natural and human resources and are sensitive to the distribution of these. Subjective circumstances, in the analogue to the domestic case, say that all societies are capable of having at least a decent government. Furthermore, all societies naturally prefer more resources than less and realize that they need to cooperate with others in some, even in only a minimal manner, in order to achieve or sustain well-being of its citizens. Hence the key questions are: how these conditions influence the relations between well-ordered societies (LP: 11) and how do we account for the just relations between societies?

The method should be the same as in the domestic case, i.e. one of pure procedural justice. This means that Rawls once again deploys the idea of the original position in order to justify the choice of principles for the just international or global institutions. One would only think that these principles are to be deduced from the argument for the second original position.

#### *Argument from the Second Original Position*

Rawls is explicitly extending the idea of social contract to a Society of Peoples. He is also explicit about it having three parts: the extension to the society of liberal democratic peoples; the extension to the

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<sup>74</sup> Considered judgments are those judgments we have the most confidence in cf. CP: 6-13; TJ: 42-46; JF: §10.

society of decent peoples; the proof that results of the extensions coincide.

Parties in the second original position are representatives of the Peoples. The idea of Peoples is crucial here since only with societies organized as Peoples one can justifiably make the thought experiment of the original position. Peoples are well-ordered political societies in which the government necessarily expresses the will of its people (cf. §3.). Hence, in the domain of the political the representative of the people truly represents its opinion. The parties are rational in the sense that they are to protect the fundamental interests of their liberal democratic society. This means they seek prosperity for their citizens in concordance with the two principles of justice and security and the safety of their territory. They are also interested in preserving the self-respect of other Peoples. Self-respect consists in the awareness of one's history, i.e. common achievements and traditions, of one's rituals as a part of being a people, in short: of one's culture. This self-respect needs to be acknowledged by others and the representatives need to acknowledge it to others. This puts a considerable constraint on the rational political goals since it introduces a principle of respect and recognition.

The parties are subject to the veil of ignorance. They do know that they represent a liberal democratic society but they do not know which one. They do not know "the size of their territory, or the population, or the relative strength of the people whose fundamental interests they represent", nor do they know the extent of their natural resources, or the level of their economic development. (LP: 32) The representatives are looking for the principles that order relations between Peoples in a just manner.

As already stated, Rawls does not present us with alternative versions of the international law, or relations. His argumentation on that account is quite brief. The representatives simply reflect on the advantages that the idea of equality and reciprocity among peoples had in history. They see no reason to depart from this idea. Rawls takes a survey through the diplomatic history and chooses the principles that he thinks were successful in expressing the ideas of equality and reciprocity. Reciprocity means that those who propose principles think that others can accept these principles too.

The constraint on the character of principles that parties seek is the same as in the domestic case: they must be universal, general, public, with ordering capacity, and character of finality. Constraints on the knowledge of the parties are also analogous to the domestic case. Rawls explicitly argues in the book against two conceptions of international justice with a great tradition, i.e. that of realism and that of idealism. Rawls' own conception is that of "realistic utopia", which he declares midway between the two traditional conceptions; however, he does not elaborate it thoroughly. The eight principles Rawls presents to us are, as we have established in the previous chapter, legal qualifications, rules that are adherent to some philosophical principles.

Hence, my intention is to present the parties in the original position with alternative conceptions of international relations: those of realism, idealism and finally those that I think should have been Rawls' version, i.e. *Rawlsian* principles.<sup>75</sup> Consequently, the parties need to deliberate on these alternative conceptions through the methods of maximin, publicity, stability, and reciprocity. Final approval must be done by the reflective equilibrium of you and me, the readers of both the Rawls' and of my own work.

## 5.2. PRESENTATION OF THE ALTERNATIVES

By the time Rawls wrote his LP, international relations theory was in full swing. This means that the parties in the second original position had to be presented with at least five options: realism, liberalism, behaviorism, socialism and Rawls' own<sup>76</sup>. The procedure conducted here will be similar to that of the domestic case, i.e. parties in the original position reason by comparing alternatives two at a time. Parties start with Rawlsian principles and compare those to the other available alternatives. The concept of behaviorism is discredited because its precepts do not pass the test of being universal and general, while the precepts of socialism fail the test of ordering<sup>77</sup>. I hope to show that a stronger balance of reasons supports Rawlsian principles, and hence these ought to be adopted (JF: 95).

We start from two contrasting ideas about international relations: one is that international relations are an ongoing struggle for wealth and power; the other is that there is a reasonably just world-order whose members subordinate equally their powers for the sake of mutual trade and protection and overall prosperity. The tradition of realism takes the first idea as its key motive while the tradition of idealism is the second. Rawls' conception as we shall see takes elements from both.

### *Realism*

In TJ, the main theoretical opponent of Rawls' thought was a utilitarian conception of justice for domestic society; in LP it is realism's conception of international relation. Realism as a theory of

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<sup>75</sup>On the distinction between the 'Rawls'' and 'Rawlsian' cf. § 1.1.3. ft. 16.

<sup>76</sup>There are two things to be noted. In this chapter I discuss different approaches in the theory of international relations. This does not mean that I am confusing international relation with international law, nor that I am not aware of the fact that Rawls takes his principles from the traditions of international law. However, my point so far has been that Rawls is not really using 'principles' on the international level. He does not use a general and universal theoretical account but simple rules of international jurisprudence, as I have hoped to have shown in the previous chapter. Here, by analyzing different approaches in the theory of international relations I hope to supplement Rawls' account with the true principles which as such would be able to account for the rules of international law but would at the same time also be guidelines for the development of these. The second thing to note is that not all approaches in international relations will be discussed here. I put my focus on the realism, liberalism and international society approach since these immediately influence Rawls' thought.

<sup>77</sup>Behaviorism is a situation and country oriented theory and hence does not provide for universal, unified standards. Socialism does not provide standards which would order claims because it does not allow a variety of claims.



international relations has a long tradition. The advocates of realism are authors such as Thucydides, Machiavelli, Thomas Hobbes, Hans Morgenthau, Hedley Bull, E.H. Carr, Kenneth Waltz, etc. Rawls explicitly refers to the classical example or realist thinking: the Athenian siege of the island of Melos during the Peloponnesian War. According to the description we find in Thucydides' History of the Peloponnesian War, upon arriving in Melos the Athenians delivered the following speech: "For you know as well as we do that right, as the world goes, is the question only between equals in power, while the strong do what they can and the weak suffer what they must" (Thucydides: V.89). Athenians further argue that liberty is the fruit of power, for Melos to hold on its independence would be misjudging of the situation with the tragic consequences (Donnelly 2000: 23).

"Of the gods we believe, and of men we know, that by a necessary law of their nature they rule wherever they can. And it is not as if we were the first to make this law, or to act upon it when made: we found it existing before us, and shall leave it to exist for ever after us; all we do is to make use of it, knowing that you and everybody else, having the same power as we have, would do the same as we do" (Thucydides: V. 105.2, quoted from Donnelly 2000: 22-23). Hence, the key element of rationalist theory is their vision of human nature as egoistic and power-seeking. Rawls reluctantly concludes that international relations have not changed since Thucydides times, and that that is one of the reasons he feels obliged to write a normative account on the law of peoples (LP: 46).

Machiavelli is another classical author who advocates realism. According to Machiavelli the world is a dangerous place. One, political leaders must always be aware of dangers; they must anticipate them and not shun any kind of precocious measures against a possible threat. Success is also based on gaining more power than others. The ruler must learn to deal with the principles of power-politics since his honor, well-being and that of his subjects depends on it. The supreme value is that of security and the survival of the state. There is no other responsibility in the international domain that counts more.

"A Prince...cannot observe all those things for which men are considered good, for in order to maintain the state he is often obliged to act against his promise, charity, against humanity, and against religion. And therefore, it is necessary that he have a mind ready to turn itself according to the way the winds of fortune and the changeability of political affairs require...as long as it is possible, he should not stray from the good, but he should know how to enter into evil when necessity commands" (Machiavelli 1984: 59-60, quoted from Jackson, Sørensen: 1999: 70).

Thus for the realists, the state has supreme importance. Its importance and normative value override that of an individual being. The states relate to each other in the same way individuals do: according to the principles of power politics.

Thomas Hobbes, another representative of realism, famously explained the relations between the state and the individual. He argued that in the state of nature, i.e. the pre-political state, everyone is in a war

against everyone else. The political state is formed in order to escape from the brute state of nature and secure protection and safety for each. People cooperate politically because of their fear. Hobbes formulated the famous prisoner dilemma, a thought experiment in which two prisoners held apart from one another are questioned about the crime they committed. They would get a lesser sentence if neither confesses, but since they do not know what the other will do, the most rational choice for each one is to keep silent and accept a longer sentence. The experiment was supposed to show that human nature is based on mistrust and egoism. People are willing to give up on some of their powers only out of fear, i.e. in order to gain protection from the sovereign. This is how political states come into being. However, on the international level there is no possibility for states to form a world government. Sovereign states will not give up on their sovereignty, and hence international relations stay in the state of nature, in the struggle for power and anarchy.

Classical realists thus argue that human nature entails in its essence a will to power; hence, the human condition in a state of nature remains insecure. The problem of insecurity may be solved on the domestic level but not on the international one, since the states are much more independent than the individual persons are. Thus internationally the only solution is anarchy and the balance of powers.

In modern times thinkers such as Hans J. Morgenthau continued classical realist thinking. Morgenthau writes that men have an *animus dominandi*, a soul with the desire for power (Morgenthau 1965: 192). "Politics is a struggle for power over men, and whatever its ultimate aim may be, power is its immediate goal and the modes of acquiring, maintaining, and demonstrating it determine the technique of political action" (Morgenthau 1965: 195). There is one morality for private conduct and another, argue Morgenthau and the realists, for the conduct of states. Realism maintains that universal moral principles cannot be applied to the actions of a state in their abstract universal formulation, but that they must be filtered through the concrete circumstances of time and place. The individual may say for himself: "fiat justitia, paret mundus", but the state has no right to say so in the name of those who are in its care" (Morgenthau 1985: 12). International politics is an arena for conflicting state interests. Each state wants its interests fulfilled. These are not fixed, and realism responds to the fact of a changing world. Thus, it cannot be guided by general moral principles. Political leaders are responsible to their peoples and precisely because of that they are justified and obliged to change their politics depending on the situation in question (cf. Morgenthau 1985: 4-17).

The most eminent representative of neo-realist thinking is Kenneth Waltz. Waltz seeks to provide a scientific justification for realist thinking; he leans heavily on the positivist models of economics. He does not speak of human nature but of the dynamics of an international system as such. His basic thought is that states are structurally similar: they all need to collect taxes, conduct foreign policy, take

care of safety and security of its citizens, etc. States do have different traditions and cultures but that is unimportant; what is important is their capability of performing the tasks every other state performs as well. Every state seeks to carry out its policies the best way it can, and doing so some are more successful, i.e. more powerful than others. International change occurs when the balance of powers shifts, in other words when some states stop performing their tasks in the usual way. In order to maintain state functions in the best possible way, states are allowed to use all methods.

Although realism has many faces, its core thought may be encapsulated in the following three points:

1. Human nature is self-centered and egoistic; people always want more for themselves.
2. States should protect their citizens and gain even more power, and are justified in choosing any means for doing that.
3. The only peace one can hope for in international relations is the balance of power.

It is the third point that is of interest for my discussion here. The realist way of thinking about human nature, and consequently about relationships between human beings, leads to the view on international relations characterized by the struggle of powers, an anarchy with no overreaching global power. Thus, realists respect the sovereignty of the state and the status quo i.e. balances of powers, as the best solution when it comes to relations between the sovereign states. This basically means that there is no such a thing as mutual support or duties between states. It is solely the state's interest that plays a role in international relations. Keohane and Nye, in their influential work, *Power and Interdependence: World Politics in Transition* (1977), explain the realist vision for international relations saying that realists assume that "force is a usable and effective instrument of policy", they furthermore assume "a hierarchy of issues in world politics, headed by questions of military security: the 'high politics' of military security dominate the 'low politics' of economic and social affairs". Finally, according to Keohane and Nye, realists "allow us to imagine a world in which politics is continually characterized by active or potential conflict among states, with the use of force possible at any time. Each state attempts to defend its territory and interests from real or perceived threats. Political integration among states is slight and lasts only as long as it serves the national interests of the most powerful state. Transitional actors either do not exist or are politically unimportant. Only the adept exercise of force or the threat of force permits states to survive, and only while statesmen succeeds in adjusting their interests, as in a well-functioning balance of power, is the system stable" (Keohane, Nye 1997: 23-37).

In its extreme form, realism is the line of thinking Rawls explicitly tries to avoid. However, one must admit that the great evils of our time, e.g. World War II, showed that realist doctrine is present and should not be underestimated in political praxis. Hence, the parties who are in the original position and

are about to choose the principles of global justice need to be presented with this influential doctrine. Therefore, the parties in the original position may be presented with the following realist principles on international relations:

1. States shall respect human rights as long as they do not collide with national goals.
2. States shall cooperate with other states for the sake of personal gain or in order to preserve a balance of power.
3. States shall not assist other states unless the assistance produces an immediate benefit for them.

Being heavily anchored in the political praxis, what is immediately politically effective does not, as I hope to show, mean that political theory should not aim for higher ideals. According to Rawls: "If a reasonably just Society of Peoples whose members subordinate their power to reasonable aims is not possible, and human beings are largely amoral, if not incurably cynical and self-centered, one might ask, with Kant, whether it is worthwhile for human beings to live on the earth" (LP: 128)

### *Liberalism*

The core idea of any liberal theory is that individual rights and liberties need to be respected: "a certain minimum area of personal freedom which on no account must be violated" (Berlin 1969: 124). And that is done not in the sense of realist thinking, i.e. in the egoistic and self-centered way, but through the respect for rights and liberties of everyone. The first task for a political organization like a state is to ensure that these liberties are respected. This notion is kept also when theorizing about the world-order.

Liberalism as a way of thinking about our social world that developed in the seventeenth and eighteenth century, as the Reformation brought religious toleration, which was followed by the fortification of secular state, i.e. the division of secular and religious states, with the secular one being put in charge of political affairs, and democratization of the labor force (LHPP: 11) Thinkers such as John Lock, Jeremy Bentham, John Stuart Mill, Immanuel Kant, and many others gave a theoretical swing to these practical-political changes. The underlining thought was to secure basic liberties; however, thinkers differ in defining those.

Rawls teaches us that in thinking about liberty we always need to keep three things in mind: "the agents who are free, the restrictions or limitations which they are free from, and what it is that they are free to do or not to do" (TJ: 202). All versions of liberalism share the faith in human reason. Humans are not utterly egoistic or evil, but are reasonable beings. As such they are capable of weighting arguments for

and against a certain regime, i.e. for and against a certain way of living together with others in one political community. Hence, reason is a good basis for cooperation. Kant talks about “unsocial sociability of men” (Kant: 8: 20), that is of an innate conflict in every individual between a desire for unrestrained freedom and the need for the company of others. This collision gives birth to culture and all the creative activities of humanity. Kant’s view is a direct response to Hobbes dictum *homo homini lupus* (man is a wolf to his fellow man). According to Hobbes, the interaction evolves in order to avoid conflict or threat; for Kant, it is a necessity for human flourishing and an inseparable part of human nature.

Liberals see the state, as well as realism, as a constraint on the unleashed freedom. However, unlike realists all liberals think that state institutions and policies need to be justified. Justification is not to be found in power games or egoistical urges, as within realist theories but in some kind of balance and the protection of liberties through political authority to which everyone can agree. According to Rawls, “a legitimate regime is such that its political and social institutions are justifiable to all citizens- to each and every one- by addressing their reason, theoretical and practical. Again: a justification of the institutions of the social world must be, in principle, available to everyone, and so justifiable to all who live under them. The legitimacy of a liberal regime depends on such justification” (LHPP: 13). This kind of thinking is core to the establishment of what Kant calls a republic, and what later came to be liberal democracies: the public or the peoples have an active saying on how they are to be governed. The sovereign is the people itself and for all political decisions public reasons are given. This line of thinking allows for the diversity in comprehensive doctrines as long as there can be a minimum overlapping consensus (PL: IV) among the parties which will account, to everyone’s satisfaction, for the cohabitation.

The applications of these notions of human nature and political systems were translated by the same token to international affairs. Most liberal thinkers saw the state as the moral actor, capable of bringing about reasonable decisions and acting towards other states in a cooperative manner. Hence, an idealist would argue that through a reasonably designed international organization, it is possible to put an end to war and to achieve a more or less permanent peace (Jackson, Sørensen 2007: 34). Already Kant argued for the idea of eternal peace. His notion of peace needed as its components states organized as republics. If these are then organized into a Society of States, a *foedus pacificum* (peaceful union), there will be no reason for war.

Kantian thought is alive today and many liberal thinkers advocate the co-called “democratic peace thesis”. The thesis is purely inductive and says that democracies do not go into war with each other. It is on one hand against their values, the public does not approve it, and on the other they in most cases

already have an economic cooperation with other democracies and hence the war does not pay off. The democratic peace thesis however does not say anything either about the war between democracies and non-democracies, or about asymmetrical warfare such as terrorism.

The necessity for such a supranational body was felt immediately after World War I. American president Woodrow Wilson initiated the formation of the League of Nations, an organization which would look after peace and security in the world. A few years after the League was formed, further steps were taken in order for peace to be secured, e.g. signing of the Kellogg-Briand Pact (1928), an international agreement for the abolishment of all war; the Treaty of Versailles (1920); the Universal Charta of Human Rights (1947); the Charta of the United Nations (1945); the Friendly Relations Declaration (1970); etc. The fact that liberal (utopian) ideas, i.e. the ideas about the necessity of cooperation among the states on the basis other than self-interest, found their place in the actual documents of international law speaks about the favorable conditions for their practical implementation.

However, political reality worked against Wilsonian ideals. On one hand, the world was experiencing the growth of fascist regimes in Italy, Germany and Spain; while on the other communism was growing in Central and Eastern Europe. The League did not last long. The short life of the League brought realist thinking back on the forefront again. E.H. Carr defines liberalism as a kind of utopianism: "...the investigators will pay little intention to existing 'facts' or the analysis of cause and effect, but will devote themselves wholeheartedly to the elaboration of visionary projects for the attainment of the ends which they have in view" (Carr 1964: 5), and this according to Carr does not work in the political praxis.

Although there are many schools and branches of liberal thinking, the elements that play a key role in their international relations theory may be summarized as follows:

1. Human beings are endowed with reason.
2. Societies should be liberal democracies.
3. International relations should be based on cooperation of different kinds between liberal democracies.

As in previous sections, it is this third point that will be of my interest. It can be elaborated through three principles:

1. Liberal states shall protect human rights as supreme normative values.
2. Liberal states shall cooperate commercially with other liberal states for the sake of the welfare of its citizens.
3. Liberal states shall support other states in their effort of securing liberty and well-being of

individuals around the world.

When it comes to the political arrangements for the domestic case Rawls is a confirmed liberal; however, in discussing international or global justice he is more cautious. He does not want to be accused of imperialism, i.e. imposition of liberal values globally. What is it that the liberal theory of international relations affirms, and what is Rawls shying away from?

### *Realistic Utopia*

Rawls explicitly argues against realism but less explicitly against idealism. He is even favorable of idealism, calling it wishful thinking in a positive manner: "The Law of Peoples hopes to say how a world Society of liberal and decent Peoples might be possible. Of course, many would say that it is not possible, and that utopian elements may be a serious defect in a society's political culture. On the contrary, though I would not deny that such elements can be misconceived, I believe the idea of a realistic utopia is essential" (LP: 6). Rawls defends utopianism or idealism insofar as it means following and respecting certain political and moral ideals, e.g. Kant's idea of *foedus pacificum*, with the underlying thought of the respect of every human being as an end in itself. But in order to achieve "utopian" liberal ideals, Rawls chooses to argue differently—contrary to the comprehensive liberals. Rawls is, similar to realists, fact-oriented, e.g. he takes the fact of pluralism of cultures under serious consideration. He combines the two traditions, liberalism and realism, by using the ideals in such a manner that they constrain and form the facts.

Let us consider the elements Rawls gives as justification of his view on global justice. My thesis is that the justification he gives us leads to substantial principles of global justice and not to the presented set of rules from Rawls himself. I will start my analysis by studying the parties in the second original position and the liberties that are due to them.

As established in the previous chapter, the main units of Rawls' ideal conception of global justice are his peoples. The peoples are idealized nation-states (Tan 2006), in the sense that they as a political regime perfectly mirror the opinion of their population. In this way, the cultural, collective, communitarian, or even national interests are preserved while at the same time not supererogatory to the rights of an individual. It is the individual who decides on how these communitarian ideas, as well as their personal rights and liberties, are to be used on the world stage. The main point is that all political institutions, be they domestic or international, are changeable and made by individual people.

Whether human nature is good or bad is of no interest to Rawls. Of course extremes, i.e. particularly evil or dangerous peoples, are not tolerated. Any character that is within a reasonable range of behavior is to be incorporated into society. The institutions in Rawls' ideal political society are to be

arranged in such a manner that everyone who lives under them will be satisfied by them. Thereby, Rawls thinks that both political and moral behavior can be conditioned, i.e. developed. Whether good or bad, people who grew up in a liberal democracy for example, have accepted certain models of conduct that lead to peaceful, prosperous and satisfactory cohabitation. They develop attachments to these practices and perform the actions necessary for the preservation of these practices and institutions even without any special self-interest. The same model applies to the international scene.

Reasonable, i.e. acceptable behavior on the world stage, means either liberal or non-liberal but decent politics. Societies that act in this manner are to be arranged into a global scheme of cooperation that they create themselves. Peoples, according to Rawls, have a definite moral nature. This means that they are capable of acting both rationally, i.e. following their interests, but also reasonably, i.e. taking the interests of others into account. This is how they express their moral nature. At its core is the idea of reciprocity.

Rawls' argument makes use of the facts of real political life. Reasonable pluralism, for example, plays an even greater role on a global scale than it does in a domestic society. Forceful persuasion of nationalistic goals led the world into two devastating wars and these great lessons of history should not be forgotten. Hence, diversity should be dealt in some way other than war: through diplomacy and cooperation. The idea of tolerance, i.e. accepting the values of others while being aware, i.e. not giving up on one's own values is the key element of Rawls' view:

“...In the domestic case, I mention a process whereby citizens develop a sense of justice as they grow up and take part in their just social world. As a realistically utopian idea, the Law of Peoples must have a parallel process that leads peoples, including both liberal and decent societies, to accept willingly and to act upon the legal norms embodied in a just Law of Peoples. This process is similar to that in the democratic case. Thus, when the Law of Peoples is honored by peoples over a certain period of time, with the evident intention to comply, and these intentions are mutually recognized, these peoples tend to develop mutual trust and confidence in one another. Moreover, peoples see those norms as advantageous for themselves and for those they care for, and therefore as time goes on they tend to accept that law as an ideal of conduct. Without such a psychological process, which I shall call moral learning, the idea of realistic utopia for the Law of Peoples lacks an essential element.” (LP: 44)

The idea of moral learning is the best example of how ideas, or rather ideals, can shape the facts. In that sense, even if people do not cooperate now, they can be conditioned to cooperate in the future. Thereby, the ideal of a peaceful Society of Peoples serves as a goal. If the goal is clear enough then the peoples, here and now, can influence the facts in its direction.

Rawls' project is clearly halfway between realist and idealist thinking. It affirms, on the one hand, the



importance of dealing with the facts of political reality, while on the other, Rawls thinks that institutions are to mitigate the differences in natural endowments and so it would be possible to create a just society even if everyone in it was evil and egoistical. Rawls agrees with Rousseau in that his goal is to take “the man as they are laws as they may be” (LP: 7).

Rawls’ idea of a realistic utopia is not a compromise between power politics and politics of rights and justice. It is rather an outer limit to reasonable exercises of justice (LP: 6 ft.8). Elements of Rawls’ view on international relations may be summarized as follows:

1. Political institutions are just or unjust.
2. Just societies are either decent or liberal.
3. International relations are based on cooperation between decent and liberal peoples.

Table 4 schematically summarizes what has been said thus far.

Table 4.

	Realism	Liberalism	Rawls
Human Nature	Egoism	Reasonable	Reasonable
States	Authoritative Regime	Democratic-liberal	Liberal and Decent
International Relations	Balance of power	Liberal Cooperation	Law of Peoples

As in the discussion on realism and idealism in Rawlsianism I am interested in the third above-stated component, which is supposed to produce the principles of global justice. As I established in the previous chapter, the principles for the Law of Peoples are actually rules of the international law and as such they form a part of nonideal theory. Thus Rawls does not fulfill his promised goal: to present us with the principles for an ideal theory of international relations, consequently global justice. His theory however gives us enough elements for such an undertaking.

We are looking for the principles of justice for the world at large; hence we envision something similar (but not identical to) a “basic structure” of a domestic society. The starting unit is that of a well-ordered society, i.e. peoples. What do the relations between the well-ordered societies, i.e. peoples, look like?

Well-ordered societies would want to secure some basic rights and liberties for all individuals in the world. This is necessary in order for a liberal ideal of respecting persons as an end in itself to be fulfilled. Personal rights and liberties are accounted for through the respect for human rights. Respect

and protection of human rights is a political necessity and an inalienable moral value in the behavior of peoples. Rawls' version of principles of global justice will have to account for these.

Well-ordered societies would most certainly want to cooperate on a commercial basis. They are aware of geographical resource diversity and hence realize the necessity for close cooperation. Their cooperative partners need to be those who they can trust, such that the freerider problem does not occur and cooperation is mutually beneficial to all parties. These arrangements express the idea of reciprocity grounded purely on mutuality: everyone is clear on their costs and benefits.

Finally, well-ordered societies realize that there must be some provisions to help each other in times of unease. It is in their moral nature that they treat other societies reasonably and with time develop an affinity towards others. It is in their interest for common institutions to work. Therefore, first there must be provisions for the cases in which these common institutions do not work; second, there must be an established way of dealing with those who do not comply with the established institutions. These provisions for "the times of unease" must agree with the idea of tolerance. Peoples would not want their misfortune to be used for imposing a foreign culture or way of life on them. The peoples can only agree to, and hope for, non-paternalistic help. Ideally, this would mean being helped in the way one would help him or herself if one were in the position to do so. This again means that the idea of a moral nature applied globally requires behavior based on the idea of a specific kind of reciprocity—one that lies between altruism and mutuality. Altruism is present in human rights respect, mutuality in commercial contracts, while this special kind of reciprocity, i.e. counterfactual reciprocity, in the provisions for assistance. Reciprocity is special because it is not direct. There is no immediate cost and benefit analysis. Benefactors may never be in the position of having their services returned while beneficiary may never be morally (or legally) required to return the service. However, there is a possibility that they might. Calamities of the world are not easy to predict. This is kind of reciprocity is counterfactual reciprocity and is the true peculiarity of Rawls' theory.<sup>78</sup>

Hence Rawlsian principles could read like this:

1. Peoples shall cooperate in protecting human rights.
2. Peoples shall cooperate with each other on commercial basis.
3. Peoples shall develop institutions for non-paternalistic assistance.

Since all of the precepts actually describe the behavior of the ideal, well-ordered societies, i.e. peoples,

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<sup>78</sup>Rawls does not call this kind of reciprocity a counterfactual reciprocity; however, the concept fits perfectly into Rawls's reasoning. To my knowledge, the term as such has only been used by Philippe Van Parijs in his Boston Review essay "Fairness" (cf. Van Parijs 1998).

I use the “shall” instead of “should”. However, the conduct of peoples should be normative for the world of states, in the sense of being an orientation point for concrete rules in concrete situations of international politics. It is also worth noting that the third principle should be lexicographically prior to the second. It is morally unjustifiable to further one’s own well-being while others have great misfortunes befall them. As long as the peoples are not equal on all characteristics, i.e. institutional, cultural and moral (at least formally), there shall be no commercial agreements between them.

### *Three Rawlsian Principles vs. Eight Rawls’ Principles*

In order to firmly establish my point in what follows, I explain how the three suggested principles relate to the eight that Rawls presents in LP. It is said that the principles need to be universal, general, and public, to be able to order conflicting claims and to give a sense of finality. The three principles are general in the same sense that any ideal theory is general: it does not use proper names, or rigged definite descriptions. The predicates used express general properties and relations (cf. TJ: 131); they should serve general knowledge in perpetuity. They are universally applicable and they must hold for everyone in virtue of their being People. Thus, peoples should understand these principles and use them in their deliberation (cf. TJ: 132). The principles fulfill the condition of publicity in the sense that everyone will know about these principles, will recognize them as principles and will know that others do, too. The point of this condition is that the parties constantly evaluate the conception, knowing that the others know about it, and conform to it (cf. TJ: 133). These principles should also be able to order the conflicting claims. The principles are the common platform for resolving conflicting claims and act as grounds for preferring one action over the other. Finally, the principles are the final court of appeal of practical reasoning. There is no higher standard that can be addressed; to reason from these principles successfully means to have a conclusive argumentation (TJ: 135). The principles have weight (cf. Dworkin 1997: 20-22; cf. §1.2.1.); as such “they override the demands of law and custom, and of social rules generally” (TJ: 135). Thus, I can firmly establish that the above listed Rawlsian principles are principles. Now I want to show that as such they account for Rawls’ in LP list of principles.

Rawlsian principles are ordered lexicographically: first comes the protection of human rights, then the actions of assistance and finally commercial relations. In this order of priority they also order rules that fall under them and relate to specific cases. Hence, the rules that deal with human rights will have a higher importance than those of assistance; commercial contracts follow both of these.

As Dworkin indicated (cf. §1.2.1.) it is often the case that a number of distinct rules can be exhibited as the exemplifications or instantiations of a single principle. Hence, the first Rawlsian principle accounts for “principles” five, six and seven of Rawls’ layout. By stressing cooperation in issues of human rights

protection, the parties do not necessarily need to agree in advance on the list of human rights. They do not settle right away on certain rights but the list may vary and be changeable through common dialogue. Some human rights may be merely respected, in the sense of not being violated, e.g. rights of liberal women in decent societies. These will then not be the reasons for active intervention while some others would be. This is important because some have objected to the fact that Rawls unjustifiably truncates the list of human rights that should be respected globally. He truncates the list that is to be an immediate justification for intervention. However, this does not mean that the larger list or a different list can be additionally respected, in the sense of not being violated.

Cooperation for mutual commercial interests accounts for Rawls' first, second and third principles. Commercial cooperation is the one for the advancement of immediate mutual interest. The formula is one of tit-for-tat. Cooperation is solely between peoples; that is, between free and equal partners who observe treaties and signed agreements.

The third principle states how the peoples act once the protection of human rights has been successful but the conditions for commercial cooperation are yet not in place. This principle accounts for Rawls' principles four and eight. It specifies what assistance (Rawls' eighth principle) should look like, i.e. it should be non-paternalistic. This will be further elaborated in Chapter 6. On the other hand it relativizes the duty of non-intervention (Rawls' fourth principle). Seen as a rule, duty of non-intervention is exclusive, i.e. any intervention in a sovereign decent society, whether political or economical, would be seen as impermissible. Therefore, the decisions of international law and politics to intervene in specific situations can be seen as betrayal of the finality aspect of this "principle". However, under the third principle suggested here, it is possible to intervene in some situation and still pay due respect to the sovereignty of a decent society. The "principle" of non-intervention is the rule for specific situations and as such should be respected. In these situations, the rule is an "all-or-nothing" guideline for behavior. However, in other contexts, intervention would be required. Both the rule to intervene in one context and not to intervene in another are accounted for by the Rawlsian third principle. It explains when intervention is allowed. As Dworkin noted, principles can account for more than one rule, depending on the concrete situation, as long as the principle stays as a final court of appeal (condition of finality) and as long as it shows us how the system of rules is to be ordered. In this concrete case, there is a duty of non-intervention if the intervention is seen as paternalistic.

Thus, Rawlsian principles clearly account for Rawls' vision of global justice, and as such are one of the alternatives that parties in the original position need to be presented with. In what follows I will compare the three conceptions and hence make the parties in the original position choose one. I will call the third conception presented here Rawlsian. Although it differs from a strict Rawls' view, it does express his

line of thinking.

### 5.3. ARGUMENT BY COMPARISON

The parties in the original position reason by comparing two alternatives at the same time. They start with a Rawlsian conception and compare it to other available alternatives. This procedure is familiar from TJ. The stronger balance of reasons supports the chosen principles. Of course, the entire endeavor depends on the list of competing alternatives and the criteria for the filtering of alternatives. The arguments are never fully conclusive but are taken to be reasonably conclusive.

The competing alternatives in this case are realism, liberalism and Rawlsian realistic utopia. The criteria for testing the alternatives are taken from TJ (JF: § 27-40). There are four criteria for each of the two comparisons. The competing conceptions are explicitly compared two at a time. Thereby, the strategies used to filter out theories are maximin rule, publicity, reciprocity and stability. We, the readers of Rawls' work who are contemplating the entire arrangement, agree upon these criteria. "We" can be the members of currently existing liberal societies or currently existing decent societies. The construction of the original position and the criteria for the selection of adequate principles need to conform to our considered judgments about the principals for the global justice in the world.

To repeat: the comparison is done by the parties in the original position, under the veil of ignorance. The parties are representatives of different societies. The original positions for the liberal peoples and for the decent peoples are two different processes. Hence, the representatives know that they represent either liberal or decent peoples, they just don't know which one.

I first take the Rawlsian version and compare it with realism. The Rawlsian version clearly cuts better in both original positions. If the parties choose realism, once the veil lifts the members of the least powerful state will surely not be satisfied. If the parties in the original position apply the maximin rule to the case of human rights protection, they would be comparing the guaranteed minimum (Rawlsian version) with the arbitrary possibility of being protected if they pertain to the more powerful society (realisms version). Since maximin reasoning makes parties choose the best possibility in the worse-case scenario, it is clear that in both cases, whether in the original position for the liberal society or in the original positions for the decent societies, parties will choose Rawlsian unconditional human rights protection. Furthermore, if the parties were to choose the principles they would most certainly abide by in political practice once the veil lifts, then they would not choose realistic conceptions of cooperation. These do not provide for reciprocity nor do they secure stability. Hence, realism passes neither the test of maximin, nor those of publicity, reciprocity and stability.

The situation is somewhat more complicated when comparing the Rawlsian version with that of liberalism. Rawls' philosophy owes much to liberalism. For once, a liberal conception is completely out of question for the representatives of the decent societies. However, since the original positions are separate I need to establish reasons that will lead the liberal societies to discredit it as well.

Under maximin reasoning, the liberal position wins, since it secures the most extensive amount of human rights protection and support for everyone, i.e. for the least advantaged. However, this reasoning is only valid if everyone is convinced and already a morally mature liberal. This means that individuals have reached the final stage of moral development in which they decided that the principles they want to follow are the liberal ones, and even more so these are the principles of comprehensive liberalism. For societies this means that their institutional arrangement is liberal, they have a homogenous internal culture<sup>79</sup> and their foreign policy is sensitive to the needs of other states and individuals.

Representatives of liberal societies under the veil of ignorance do not know what kind of liberal society they represent. To commit themselves in advance to the world of comprehensive liberals would add a premise of dogmatism and possibly endanger their own comprehensive religious doctrines. Comprehensive liberalism, when forced from the outside, burdens the idea of self-determination and tolerance. Well-ordered societies take great pride in their historical achievements and the struggle for self-determination.<sup>80</sup> They are aware that true freedom can only be acquired if the process is done without authoritarian imposition or guidance. Hence, imposing liberal values on the rest of the world cannot bring stability and happiness. Furthermore, part of the idea of freedom is to constantly reflect on one's institutions and values; thus, it may happen that liberals in due process adopt some political values from the decent peoples.

Comprehensive liberalism does not respect the idea of publicity; if declared publicly, those who have not reached the highest level of moral learning will feel deprived of the right to self-determination. It does not make institutions more stable; on the contrary, stability is a trait of institutions that allow questioning and "changing of mind". Only in that way can all portions of society (even those on the lower stages of moral learning) grow attached to the institutions and show their allegiance. Finally, it does not account for the principle of reciprocity but rather for that of altruism or benevolence and in this way does not account for the idea of self-respect of all parties. Altruism is irreversible, non-reciprocal,

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<sup>79</sup>This means that liberalism is practiced in all aspects of human life; it is not just a political doctrine. In Rawls' philosophy, liberalism is explicitly political, and is connected to political institutions while privately one can practice various comprehensive doctrines. In the philosophy of comprehensive liberals like Kant and Mill, these two aspects, the political and the private, are not separated. According to them, liberalism is one comprehensive, all-embracing doctrine.

<sup>80</sup>Cf. §3, where I explain the establishment of the Peoples, i.e. the well-ordered societies.

one-way help. It is connected to any arbitrary individuals, simply because he/she is a human being and all human beings are to be treated as free and equal and therefore eligible for assistance. Liberal assistance requires a duty of beneficence: a supererogatory duty that imposes the liberal criterion on all individuals and societies everywhere.

The Rawlsian conception of cooperation and assistance vows not to be paternalistic. By supporting reasonable, but not necessarily liberal institutions, the Rawlsian conception escapes the objection of imperialism while at the same time accounting for the ideas of reciprocity, tolerance, self-determination and self-respect. The idea of stability is, in the Rawlsian conception, connected to the idea of moral learning: those who grow up in a well-ordered society develop an allegiance with the common institutions. After a time, this support is automatic, even enhanced with feelings of belonging and patriotism. A similar thing is expected to happen with the Rawlsian conception of global justice. Its third principle, which provides everyone with non-paternalistic development with due support, generates its own stability. It does not impose values on anybody while creating a general system of security, i.e. insurance against calamities. Cooperating with those who do not share our values may at first be done out of pure self-interest, e.g. necessity of resources or necessity of their help. Later, however, if the system proves to be working successfully, cooperation with others will be for the sake of cooperation itself, or rather for the sake of the general prosperity it generates. The liberal conception of international relations cannot do this. It can generate support only from those who are convinced liberals. The others, i.e. non-liberal but decent peoples, would feel forced into cooperation, with certain conceptions being imposed on them without the space to negotiate the validity of their own view.

This concludes my survey of the two comparisons between Rawlsian liberal and realism's conceptions of global justice. I hope to have clearly shown what the basic ideas of each conception are, as well as successfully managed to argue for the Rawlsian. If the original position, with the veil of ignorance and symmetrically situated parties, should be a device for deducing principles of justice, then Rawlsian principles are those to be deduced. Two separately conducted deliberations from the original position, one done by the liberal and one by the decent peoples, came to the same conclusion: Rawlsian principles are the optimal solution for a peaceful and consequently just world order.

In this chapter, I analyzed three perspectives on international relations: realism, idealism and Rawlsianism. These I presented to the parties in the original position. I hope I was able to show in a conclusive way that the parties prefer the Rawlsian conception.

Thereby, the conception called Rawlsian is not the one presented in Rawls' work directly, but that is implicit to it. It supplements, or rather interprets it, making it richer and more capable of responding to

objections.

One may ask why I did not present the parties in the original position directly with the theories that object to Rawls', i.e. that of cosmopolitanism and communitarianism. The answer is that these theories all originated subsequent to Rawls' theory. At the same time, cosmopolitanism has its roots in the long tradition of idealism, while communitarianism is rooted in the realist tradition. Hence, when presented in their simplest form, as was done here, liberalism and realism do account for cosmopolitanism and communitarianism respectively.

In the following chapter I will further elaborate on the third principle presented here. I take it to be a peculiarity of the Rawlsian conception and an important guideline for the development of contemporary international relations.



## CHAPTER SIX

### NON-PATERNALISTIC ASSISTANCE: PRINCIPLE OF SOLIDARITY

Rawls' Law of Peoples regulates the relations between the well-ordered societies, which Rawls calls the Peoples. In order to be worthy of the name, the Peoples need to fulfill numerous conditions: in their internal affairs their institutions correspond to the conceptions of political justice of their population; in their foreign affairs they are reasonable, i.e. take into account the existence and active practice of the interests of others. Of fundamental interest to peoples is advancing the well-being of their population, though not at all costs. Peoples are lead by *statesmen* who are long-sighted and do not seek immediate benefit or power, but rather have a *peaceful world of satisfied peoples* as their final goal.

These Peoples, as we saw in the last chapter cooperate according to these three principles:

1. Peoples shall cooperate in protecting human rights.
2. Peoples shall cooperate with each other on a commercial basis.
3. Peoples shall offer non-paternalistic assistance to other societies.

The first principle is twofold. On the one hand, it imposes negative duties on all societies: they should respect human rights everywhere (in the sense of not harming them); on the other, the principle imposes positive duties, in the sense that the societies are obliged to actively work on the protection of human rights even if that means intervention--military or other. As I established in the previous chapter, positive duties are strictly connected to the specific human rights called basic human rights. Disrespect of these rights would lead us out of the theoretical framework of an ideal theory. Hence, it is important to stress this as an internal condition for the Society of Peoples.

The negative duties that societies have presuppose non-violation of a much broader palette of human rights. Non-violation in this respect comes down to the idea of toleration. To tolerate means to recognize others and their doctrines as members in good standing. It means that though one does not directly agree with the other, they are willing to accept the differences. These differences can be large or small depending on the society in question, and hence the list of respected human rights can also become ever longer through the dialog of societies and their practice of toleration. Respect for human rights, both as a negative and as a positive duty, is based on a general respect for human beings, on altruism, on internal values of each society; in that sense the societies that observe human rights do not expect any reciprocal gain from it.

The second principle is that of cooperation in its narrowest meaning. It refers to the business-like

arrangements between equal partners that epitomize the idea of treaties in their ideal form: consent from both parties is necessary and each knows its costs and benefits. Gain takes place on both sides, with the only difference being the goods that are gained. This principle is based on direct reciprocity; it is a simple tit-for-tat principle.

Finally, the third principle is a new emerging principle in international relations that consists of the positive duties, other than humanitarian ones, that societies have towards one another. Globalization has made us aware of different distant societies and their problems. Furthermore, it made those problems vivid and close to us. Any reasonable being cannot think that humanitarian assistance is enough to lead us to the peaceful world of satisfied peoples. Peoples are to develop institutions to support other societies, which may be Peoples or non-Peoples, in ways that are different from tit-for-tat reasoning and also different from purely altruistic humanitarian help. It is this ideally conceived principle that distinguishes Rawlsianism from other theories of global justice or international relations. It elaborates on the law of cooperation in its broad definition, i.e. not as being based on direct, but on counterfactual reciprocity. This principle comes into play when the work of positive humanitarian duties is done. It works together with the idea of toleration on enlarging the list of human rights respect and on making the societies fit for commercial cooperation. In that sense it is a transitional principle, which mostly deals with building of political conscience and political institutions. Without these, no commercial cooperation is possible. If this third principle is in place, then it is not important whether the list of human rights is long or short; this non-paternalistic assistance will account for duties that go beyond those of basic human rights.

In my view it is proper to call this third principle the principle of solidarity. I justify my terminological choice with the insight in the conceptual and terminological history of solidarity (cf. Appendix I). However, since solidarity's meaning has never been firmly fixed, I use its many historical appearances to interpret it in a modern, liberal, Rawlsian manner.

## 6.1. CONCEPTUAL ANALYSIS OF SOLIDARITY

I will start my analysis by giving one concrete example of the principle of solidarity and work from a concrete to a general case. The famous duty of assistance from Rawls' LP is one of the possible interpretations of the principle of solidarity. As it was established in §4, duty of assistance is the rule that leads the way from the nonideal to the ideal world.

Duty of assistance is a political obligation. According to Rawls, this duty is truncated in the assistance in forming decent or liberal political institutions. This particular duty is owed only to the Peoples. Well-being of the citizens depends, according to Rawls, on finding the right way of regulating their common life. The success or failure of certain societies lies in their “political traditions, institutions of law, property, and class structure, with their sustaining religious and moral beliefs and underlining culture” (LP: 107). Societies may be hindered in some way in developing these traits. If, however, they are showing good will towards having just or decent institutions, i.e. they are not aggressive or expansive and treat their citizens with respect; they ought to be helped out of their unfavorable position. The help cannot be translated into one universal formula. Societies have different cultures and different conceptions of justice, i.e. different ideas of how they should be governed. These differences need to be respected. Thus, if it is to be effective, the help needs to be “personalized”.

Well-ordered societies need not be wealthy, but all citizens do need to have their basic needs filled. Political institutions need, in any case, to correspond to the population’s conception of justice. Rawls also sees it as important that the help has a distinct cut-off point which allows for further self-development of the society. Duty of assistance, as an expression of solidarity, is hence political assistance between certain groups of peoples: those that are already politically well-ordered and hence already constitute the People and those that are yet to become well-ordered. The goal of assistance is for the beneficiary to become a politically respectable and formally an equal international partner. For help to be effective and stable it needs to be non-paternalistic. This means that the assistance must express the beneficiary-society’s own conception of justice. Assistance is neither eternal nor comprehensive; it is concerned with one particular issue, in this case with that of a political structure. The rationale of the benefactors is that no one is exempt from the calamities in the world. Should these befall the benefactor-society it would also want to be helped and it would want help to be in the manner suitable for them as a beneficiary society, not in the manner benefactors find suitable. This kind of thinking is counterfactual thinking about reciprocity. The gain is not direct but indirect, i.e. counterfactual. Hence, I can conclude that the duty of assistance is non-paternalistic help in creating viable political institutions, with a clear cut-off point once these institutions are in place and with no expectations of direct reciprocal gain.

Solidarity, as I mentioned at the beginning of the chapter, is more of a general concept that encompasses the duty of assistance as well. It is more general because, in my view, it applies to a larger scope of actors, i.e. all kind of societies fall under it and it is on call as soon as the basic human rights are fulfilled. While in the case of the duty of assistance, the beneficiary society needs to have their conceptions of justice already developed, whereas in the case of general solidarity this does not

need to happen. The benefactor society, which needs to be well-ordered, helps in the political education of the non-well-ordered. Thereby, the assistance needs to be suitable for the beneficiary-society's culture and tradition; therefore non-paternalistic. This is particularly important in the post-intervention strategy. While the duty of assistance can be interpreted as an insurance the Peoples create for themselves in case calamities befall them, solidarity in general is between insurance and altruism. It is in any case counterfactual thinking about the state of the world that in some cases approaches more the idea of general altruism and human rights while in others it has more of an insurance character. The more ideal the theory is, the more of insurance character solidarity will have; the more nonideal it is, it would need more altruism or unselfish help from the part of benefactor societies in order for the beneficiary society to be put on its feet again. Solidarity in a nonideal world is problematic since the gain is not immediately visible and harder to be presented by the politicians to the electorate. However, I can establish that:

*Solidarity is non-paternalistic, issue-oriented help based on counterfactual reciprocity.*

In what follows I will elaborate on the elements of solidarity: on paternalism, and respectively non-paternalism; on what it means to be issue-oriented; and on counterfactual thinking.

### **6.1.1. PATERNALISM**

Paternalism draws its name from the analogy with the relation of father and child, where the father is acting on the child's behalf and with the intent to benefit the child. However, political subjects do not appreciate being treated as children. This deprives them from their right to self-determination. Is this negative connotation of paternalism justifiable?

In defining paternalism, Joel Feinberg makes a quite instructive distinction to presumptively blamable and presumptively not blamable paternalism. In his book *Harm to Self* (1989), he distinguishes between:

“ 1. Presumptively blamable paternalism, which consists in treating adults as if they were children, or older children as if they were younger children, by forcing them to act or forbear in certain ways, either-

a. (benevolent paternalism) “for their own good”, whatever their wishes in the matter (this may or may not be blamable in the last analysis; that is the question at issue), or-

b. (nonbenevolent paternalism) for the good of other parties (e.g. teachers or factory managers), whatever their own wishes in the matter (This is generally thought to be blamable.)

2. Presumptively nonblamable paternalism, which consists of defending relatively helpless or vulnerable people from external dangers, including harm from other people when the protected parties have not voluntarily consented to the risk, and doing this in a manner

analogous in its motivation and vigilance to that in which parents protect their children” (Feinberg 1989:5).

This second type of paternalism, the presumptively nonblamable, is not controversial and is not of my interest here since it does not deal with the actors that are not of normal physical or psychological capabilities, and hence per se cannot be taken to be equal contributors in social cooperation.<sup>81</sup>

Genuine paternalism is explicated by Feinberg in the cases 1 a. and 1 b. Postulating non-paternalism means arguing against these two cases. Therefore, I am interested in why this type of paternalism is presumptively blamable; the circumstances in which paternalistic behavior originates; and what the structure of it is.

The structure of presumptively blamable benevolent paternalism can be summarized in the following way:

A is paternalistic towards the B if and only if:

1. A aims to bring about that which, with respect to some state(s) of affairs, concerns B's good in the circumstances when B's choice or opportunity to choose and make decisions is denied or diminished;
2. A's belief that A's behavior promotes B's good is the main reason for A's behavior;
3. A is reluctant to the B's belief that an A's behavior does not promote B's good.

While the structure of the presumptively blamable non-benevolent paternalism says as much as:

A is paternalistic towards the B if and only if:

1. A aims to bring about that which, with respect to some state(s) of affairs, concerns B's good in the circumstances when B's choice or opportunity to choose and make decisions is denied or diminished;
2. A's belief that this behavior promotes both A's and B's good is the main reason for A's behavior;
3. A is reluctant to B's belief that A's behavior does not promote B's good at all.

The first condition in both cases says that the B is unable act out of some reason that is not conditioned

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<sup>81</sup>It would be begging the question if I would argue that the law ought to protect those not capable by their intrinsic characteristics to defend themselves. Interference in their freedom of action is necessary and can be justified on the grounds that are not paternalistic, i.e. on the grounds of preventing harm being done to them. Even Rawls, who is fundamentally against paternalism, allows for this second option. He even builds it implicitly into the set-up of the original position as prevention for the case that the power of reason is lost. Only in this case one is allowed to make decisions for others, and thus in the following manner: “We must choose for others as we have reason to believe they would choose for themselves if they were at the age of reason and deciding rationally. Trustees, guardians, and benefactors are to act in this way, but since they usually know the situation and interests of their wards and beneficiaries, they can often make accurate estimates as to what is or will be wanted.” (TJ: 209).

by its natural capacities but it is rather conditioned by circumstances. This further initiates A to act or to make a decision either completely on B's behalf or to guide B in making a certain decision. The reason why A does that has been specified by the second condition. A either evaluates what would be the best for B, or A calculates what would be best for both of them, i.e. how to use B's incompetence for the mutual advantage. Thereby, it is said that it may happen that B is not in accordance with A's decisions but is "forced" to follow them.

In both cases B is constrained in his liberty to act or choose; A is choosing for him. Therefore, it is also B's autonomy that is constrained. I define autonomy in the Rousseau-Kant-Rawls' tradition as that character trait which says that we are to abide only by the laws that we have chosen ourselves. As Rawls puts it "...acting autonomously is acting from principles that we would consent to as free and equal rational beings and that we are to understand in this way. Also, these principles are objective. They are the principles that we would want everyone (including ourselves) to follow were we to take up together the appropriate general point of view." (TJ: 516) Consequently, we only approve institutions that provide for the individuals that are "self-authenticated sources of valid claims" (JF: 23). Neither of the presumptively blamable paternalisms seems to respect this.

In case 1a, A tries to do what is best for B. However, it is highly questionable how a third person can know what that best is, no matter how benevolent that person might be. Furthermore, as soon as the third person, in our case A, makes a decision or forces B into a decision of which he is not convinced, B's autonomy has been disrupted. His freedom has also been disrupted, but this is something that has been in question from the very beginning, otherwise we would even get into "the business" of paternalism.

The way of justifying benevolent paternalism would be to declare it educative, in the sense that A's goal is to teach B how to start making decisions on its own. However, it is questionable how much of B's autonomy can be saved if A and A's tradition perform its authority in educating B. This influence endangers B's self-determination process. This means imposing a model of thinking on B, which A claims is best for B, instead of just letting B think for him/herself. It is a delicate version of autonomy encroachment.

Many philosophers, e.g. Gerald Dworkin, Joel Feinberg, have thus approved this kind of paternalism. Dworkin argues that paternalistic restrictions are justifiable when they heighten a person's ability to lead a rationally ordered life. Dworkin advocates moral paternalism, which says that the rationally ordered life does not necessary mean a better life in terms of welfare, but in terms of ethical values. The influence is justified if we are to make the influenced person a better person by it, even if he/she does

not recognize it. Feinberg's position, on the other hand, is justification of criminal law. He argues that the state has a right to prevent self-harmful conduct even when it is non-voluntarily or when temporary intervention is necessary to establish whether it is voluntarily or not.<sup>82</sup> Both Dworkin's moral paternalism and Feinberg's legal paternalism presuppose a unified moral or legal community, which shares in Dworkin's case same moral values, and in Feinberg's case the same conception of "harm". Thus, these paternalistic behaviors cannot be easily justified on a global level.

The case 1b is less controversial than 1a. This case does not even hide the fact that it does not primarily care for the good of B. It takes it into account only secondarily. In the forefront of assistance is the self-interest of A. Hence, it is clear that B's freedom of action will be influenced; however, his autonomy, his way of thinking, and his possible wish for self-determination will not be touched. A in this second case does not go beyond fulfilling his own needs and influencing B's actions in that direction. What B really thinks is of no interest for A. The stability of the resulting state of affairs is fragile since as soon as B gains freedom it may rebel. This is why Realpolitik cannot lead to a stable and durable world order: it does not constrain autonomy, it constrains freedom of action in such a manner that autonomy cannot come to its expression, but it might as soon as there is an opportunity for it.

Thus, we can conclude with Rawls that political society, especially a global one, cannot generally be constituted on the principle of paternalism. Even if the general capacities, wishes and needs of men were known, each individual, still needs to find them for himself/herself and therefore political institutions need to support an individual's autonomy and its free development. Paternalism in its genuine sense neglects freedom and autonomy of its subjects.

The question is if not paternalistically, then what is the way to assist those who in a particular moment in time lack a power to choose or make a decision. My answer is through solidarity. Solidarity means the relation of equal comrades. One comrade stands in for the other if the freedom of the other has, for some reason, been violated. Both are autonomous beings knowing fairly well what needs they have and what values they advocate. They help each other so that their autonomy may reach its full expression.

The true problem with paternalism is the third premise (see the above formal account of paternalism): "A is reluctant to the B's belief that an A's behavior does not promote B's good". If, however, the assistance offered offers also expertise for the problem, in such a manner as for a solution to be a

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<sup>82</sup>The example Feinberg gives is wearing the seatbelts in cars. The state forces everyone to wear seatbelts; not wearing them could cause harm, which is unintended by people who do not wear them. Thus, the state prevents people from involuntary self-harm.

mutual endeavor of A and B and in so convincing to both A and B (whatever option they might have held before) than one may say that the paternalism-objection has been rebutted.

This is, of course, a comprehensive endeavor and accrues a lot of discussion between the parties. Public reason plays a role; even employment of the third parties is recommendable. A process of reflection needs to establish its equilibrium with all the participants. Since the process is complicated not all political issues can be dealt with in this way. Many state laws, like criminal law for example, need to be somewhat paternalistic and this is justifiable by the set of shared values in society. Hence, it is taken to be known what the others need. Globally this is not the case; therefore, global issues need to be settled through solidarity, i.e. through discussion between the parties and benefactors formal support for the content produced and approved by the beneficiary society.<sup>83</sup>

### 6.1.2. THE COUNTERFACTUALS

Counterfactual arguments have following structure: “If it *had been* the case that C (or not C), it *would have been* the case that E (or not E)”. Counterfactuals make claims about events that did not actually occur. Hence, if I were to assist someone with the thought “It could have been me”, than the justification for my noble work is counterfactual thinking about the occasion in question. It *could* have been me; the fact is however that it was not.<sup>84</sup> It might however happen that I find myself in a similar situation in the near future. If it happens, I will await others to help me. The expected help, in the hypothetical case, is the base for counterfactual thinking about reciprocity. Reciprocity here stands in the spirit of Rawlsian idea of reciprocity (PL: 16-17; JF: 122-123), which is between altruism and mutuality. The current falseness of the antecedent in the counterfactual reasoning is the altruistic component, i.e. one is aware that it is not him or her in the beneficiary-situation, and that it might never

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<sup>83</sup>In his theory of justice for a domestic society Rawls stresses the condition of *fraternity*. He says that the so-called difference principle is the expression of the idea of fraternity. According to the historical sketch of the concept of solidarity that I present in the Appendix I, the ideas of fraternity and solidarity are so kindred that it is hard to distinguish them. I even argue that the distinction is not necessary. Thus, Rawls’s difference principle should formally correspond to the idea of solidarity presented here: it should be non-paternalistic, issue-oriented help based on counterfactual reciprocity. However, since the difference principle is the concept strictly connected to the domestic case, one may think that this idea is more connected to common values. In the domestic case all are allowed to develop their conceptions of a good life and to be supported in doing so, but it is presupposed that for conceiving and developing the ideas of good, everyone needs a specific basic goods. Hence, one may think that Rawls does advocate a type of benevolent blamable paternalism, similar to Feinberg’s. I think do not think this is the case. Rawls’ range of primary goods is very wide and not value-burdened. Primary goods secure a framework for developing one’s expectations; they are, however, left to each individual to decide on his/her own.

<sup>84</sup>It may sound as if presumably blamable benevolent paternalistic actions have a structure of counterfactual reasoning. However, this is not so. Some agent A which is tutelage B, may think the action to be best for B. It does not follow that A is questioning what A would be thinking had A been in the position of B, or what A would want i.e. not want to be done to him. Maybe A would not be satisfied with the tutelage. Paternalistic thinking is one- while counterfactual thinking is two-dimensional. The first is what the benefactor thinks the beneficiary would want. The second is what benefactor thinks he would want were he to be in the place of the beneficiary. Hence, both perspectives need to be taken into account: that of benefactor and that of beneficiary.



be, but despite one is helping; while the possibility of the antecedent becoming true accounts for the mutuality, i.e. if one ends up in the situation of beneficiary one would expect same kind of help.<sup>85</sup>

An important question is when people are to be persuaded by this kind of counterfactual reasoning. In other words, when would counterfactual reciprocity be an adequate motivation for an action? Reasoning in counterfactuals has no way of proving what would actually happen. Tetlock and Belkin, in their article “Counterfactual Thought Experiments in World Politics: Logical, Methodological, and Psychological Perspectives” (1996), list certain criteria which need to be fulfilled in order for a counterfactual reasoning to be taken as adequate:

1. *Clarity*: Specify and circumscribe the independent and dependent variables;
2. *Logical consistency or cotenability*: Specify connecting principles that link the antecedent with the consequent and that are cotenable with each other and with the antecedent
3. *Historical consistency* (minimal-rewrite rule): Specify antecedents that require altering as few “well-established” historical facts as possible;
4. *Theoretical consistency*: Articulate connecting principles that are consistent with “well-established” theoretical generalizations relevant to the hypothesized antecedent- consequent link;
5. *Statistical consistency*: Articulate connecting principles that are consistent with “well-established” statistical generalizations relevant to the antecedent-consequent link;
6. *Projectability*: Tease out testable implications of the connecting principles and determine whether those hypotheses are consistent with additional real-world observations (Tetlock, Belkin, 1996: 18).

If these criteria are fulfilled we can reasonably use the counterfactual thinking and also expect others to understand it as such. The substance that will fulfill these criteria needs to be arrived at in the public discussion between the solidary actors, about the issue in question. The more common values the solidary actors share the easier would be to fulfill the criteria.<sup>86</sup>

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<sup>85</sup>Counterfactual thinking has a form: If it were I in the situation X, I would have wanted the help in the form of Y. This is why I am helping in the form of Y. However, it was not I in the situation X, thus my help is without a direct benefit, and it is altruistic. If I end up in the situation X, that it is clear that I await the help in the form of Y, the same kind I gave to the others. Thus this is the relation of mutuality.

<sup>86</sup>Although common values are not necessary for the relation of solidarity.

After specifying the benefactors, beneficiaries and the problem, one needs to account for connecting principles that can sustain the conditional claim. These arguments need to be specified precisely, they need to be consistent with each other and with antecedents and the consequence (Tetlock, Belkin 1996: 21). In our case of political solidarity as the art of assistance, the connecting principles are those about the well-orderedness of the benefactor societies: these are liberal or decent and hence have no imperialistic or aggressive aspirations. Decision-making in the benefactor's society will not be influenced by its rational goals. Furthermore, the moral nature of well-ordered societies makes unselfish empathy possible. Several scholars also proposed as one of criteria for useful counterfactuals: "minimal- rewrite-of- history". This rule is designed to eliminate far-fetched counterfactuals that radically transform the temporal landscape (cf. Tetlock, Berkin 1996: 23). These scholars propose that any reasoning about the possible worlds should start with the real world, and does not require us to unwind the past and rewrite history a new; it does not unnecessary disturb what we already know about the original actors and their views. Rawls stresses a few times in his LP that in arguing about global justice, we start from where we are. LP then shows us where we, such as we are, might end up. If I take the duty of assistance to be an example for the principle of solidarity then reasoning goes in the following way: The beneficiary is the burdened society, the benefactor the well-ordered one; the problem is, for example, a natural catastrophe which disabled the beneficiary to function. After securing the basic human rights of the people in the beneficiary's society (part of humanitarian duties), the benefactors continue assisting the beneficiaries in making their institutions work. Therefore, the benefactors are not suggesting or imposing the forms of government that would possibly be the best for benefactor's society, or for an overall cooperation in the region, but looking at the history, traditions and statistics of the beneficiary society, consults its former officials and peoples so that the institutions that will be formed are approved and are suitable to its people.

There are a few methodological problems with reasoning through counterfactuals.<sup>87</sup> First, the causal mechanism is unobservable. In the concrete example of the duty of assistance, we cannot observe whether assistance in forming political institutions in a non-paternalistic way would help more than approaching the society imperialistically and imposing a certain political structure on it. The second problem concerns the problem of multiple theories about the world. It may happen that the benefactor society never needs help itself and that many members of that society then think that the sources used for helping others are being wasted. Others may think that the action of helping makes the world more

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<sup>87</sup>Barry R. Weingast, lists here named methodological problems in his article "A game-theoretic Approach to Counterfactuals and Its Implications for Political and Historical Analysis", in *Counterfactual Thought Experiments in World Politics: Logical, Methodological, and Psychological Perspectives* (ed. Tetlock, Belkin 1996: 230-247).

secure overall and therefore also makes it possible for the benefactor-society to develop. Hence, the benefit for the benefactor-society is not direct, but indirect and important. It is hard to choose which of these alternatives would/should be better. Finally, it is often easy to miss underlying causal mechanisms; that is, in the concrete case of the duty of assistance, it is easy to miss how exactly the beneficiary society would behave.

None of the three methodological problems pose serious objections if the world shares a minimum common agreement on the importance of societies self-determination (debilitates the first objection); common belief in the idea of cooperation as a necessary condition for peaceful and prosperous world (debilitates the second objection) and agrees on the above listed conditions of counterfactual thinking and on the usage of public reason (debilitates the third objection). Hence, counterfactual thinking is one of the necessary elements of political obligation, i.e. reasons for acting within the political sphere.

### **6.1.3. ISSUE –ORIENTED ASSISTANCE**

Solidarity as a way of assistance is always connected to one specific issue. It is not comprehensive, unconditional help. Global solidarity applies to the calamities that go beyond the human rights protection, which is then unconditional. It is activated after basic human rights have been assured. For example, if the society in question is the one which just happened to turn down an authoritative ruler, then it would need help in creating just institutions; if it is the society hit by terrible natural catastrophe it might need assistance in rebuilding its infrastructure; or it might just happen that the society wants to change its economic-profile, hence it needs assistance in restructuring, etc. The issues can be various, as soon as the basic needs are fulfilled, the assistance turns into one of solidarity: renewing (or establishing) economic and social infrastructures, establishing transportation and communication systems, banking, health care, education, and agriculture, reconciliation in the case of civil wars, demilitarization, etc.

The issue, for which solidarity as a form of assistance is to be performed, must be universally recognized as a problem, and publicly known as such. The precepts of the solution, i.e. of solidarity, are also to be publicly known. The issues must be such that solidary societies can relate to, or can imagine, counterfactual arguments for the issues in question. This does not presuppose a common world-value system, but a minimal common understanding of what problematic issues are. It is like Thomas Nagel said: “we are all aware that we live in an unjust world” (cf. § 1.). This does not mean that everybody has to share the same comprehensive system of values a priori; it only means that the problem is recognized as such and the parties are willing to negotiate on the solution. The solution is hence

focused on one specific issue and does not take the whole system of values into consideration.<sup>88</sup> Hence, the issues are not pre-settled, and the mode of assistance is also different for each issue. Furthermore, issue-oriented account is time-limited: as long as “the issue” is settled the assistance stops. Rawls, for example, insists on the cut-off point of international duty of assistance.

A critic may notice that any cooperation is an issue-oriented. If we take “issue” in the broad sense to mean personal gain or profit, and not common acute problems, this objection stands. However, I hope to have made clear that the “issues” in question here are those, which may be solved with the excessive donation of some who do not have immediate gain from it.

## 6.2. *FUNCTIONAL ANALYSIS OF SOLIDARITY*

In this section I will investigate exactly how the concept of solidarity, as I defined it here--non-paternalistic, issue-oriented support, based on counterfactual thinking about the world--is to be practiced in our world, here and now. In other words, what are the principles of nonideal normative theory that would lead us to a more solidary world? How should we arrange our institutions in order for them to be in concordance with the principle of solidarity?

Rawls is very scarce in explaining what ideal institutions should look like. Instead, he alludes to the fact that they are not supposed to be a part of one big supranational body with some centralized authority, but a network of many different institutions that would work parallel to the political systems of societies and would be responsible for specific issues: peace, money transfers, cultural issues. Different agencies are then to be deployed depending on the issue in question. For the ideal theory it suffices for support to be about restoring the political system, and it also suffices if the support is inter-governmental, since in an ideal theory we are dealing with well-ordered states, i.e. the Peoples. In nonideal theory it is also important for the ideas about this system to come into being. Hence on one hand, Rawls is right in listing the duty of assistance as the principle of global justice, however it is not a nonideal principle, as Rawls characterizes it, but an ideal one (cf. § 5.2.8.) It characterizes the idea of solidarity in the ideal theory. Solidarity in the ideal theory is a duty to assist, which comes down to only political assistance. In a nonideal theory it can be interpreted in many different ways, having as their

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<sup>88</sup>Of course the solution is not supposed to collide with the overall system of values but it should be able to be negotiable as independent as possible and not be seen as a tool for promoting certain values. If the benefactor society uses supportive actions in order to promote own value system, this would be the case of blamable paternalism and would have a rational gain as its final goal. This is not the structure of support I find necessary for making a world a better place.

guideline the world of satisfied states, or rather Peoples that stand in for each other only insofar as to sustain the satisfactory political system. It can, however, be interpreted differently in the nonideal theory where societies are not just “burdened” but still do not have clearly formulated conception of political justice. The political morality has not yet matured in these people. Therefore, non-paternalistic assistance should deal with all kinds of issues: from plain building of political and social infrastructure to political and social education. How would this look in practice? How are the conditions of non-paternalism and counterfactuality to be fulfilled?

Hence, to effectively be solidary in our political praxis means one of two things: either fortification of the civil sector where truly transnational, multicultural bodies are dealing with global problems, e.g. organizations like Transparency International or Human Rights Watch; or it could mean intergovernmental cooperation in the sense of expert gatherings on the account of certain issues. The influence of civil society can serve to draw attention to the burning issues but is not an authoritative source on concrete problem solutions. The idea of expert-gatherings that I will present here is similar to what Anne-Marie Slaughter calls global governance (Slaughter 2002). Slaughter identifies global governance “as the collective capacity to identify and solve problems on a global scale” (Slaughter 2003: 83) and this capacity must be developed “without risking what Immanuel Kant called the ‘soulless despotism’ of world government. And we must develop it in a way that is genuinely global” (Slaughter 2003: 83). In both cases there is a need for a vast dialogue between the parties. It might so happen that some parts of the beneficiary society are viable and can be reasonably dealt with, while others are not. Hence, depending on the issue, local partners are to be found. In a dialogue, parties are going to try to understand each other’s problems and the means for solving them. In this way, more mutual understanding and counterfactual thinking is possible. The parties are not only connected by altruism or charity but by a serious understanding of each other’s, i.e. the world’s, problems.

The idea of having expert-rounds to deal with the injustices in the world is most vehemently advocated by Anne-Marie Slaughter in her impressive book *A New World Order* (2002), where she writes:

“So what exactly do government networks do? Their members talk a lot. Indeed, in one category of networks, talking is the primary activity. These are information networks, created and sustained by the valuable exchange of ideas, techniques, experiences, and problems. In many ways these networks create the equivalent of collective memory and collective brainstorming over time. In a second category of networks, talk leads to action—direct aid in enforcing specific regulations against specific subjects. These are enforcement networks, which also encompass training and technical-assistance programs of developed-country regulators for their counterparts in developing countries in order to build the recipients’ capacity to enforce their own domestic regulations. A third category comprises harmonization networks—networks that, to facilitate trade, provide the infrastructure for complicated technical negotiations aimed at harmonizing one nation’s

laws and regulations with another's. Harmonizing distinctive national laws can have significant policy implications, which makes harmonization networks, suspect for those concerned about democratic input into the regulatory process.

These three types of networks have overlapping functions-harmonization and enforcement networks also exchange information and offer assistance; information networks can also make common policy for their members under certain circumstances" (Slaughter 2002: 51-52).<sup>89</sup>

Slaughter then proposes expert-rounds within governments. Hence, national identity would be preserved and who comes from what country would still count. However, experts are to be concerned with proposing solutions to a certain burning issue and not in advancing rational interest of their country. Since experts are not political figures and do not need to be concerned about the next election, they may be truly impartial. Experts from different societies are educated and affirmed individuals who have acquired the final stage of moral development (cf. § 2.2.1.). They reason soberly and impartially. They do not need to fear losing the next elections, but rather something much bigger: "social conditions for self-respect". Rawls lists as a primary good the recognition an individual gets through his/her group. Experts are in the public eye, and in their decisions they gamble with their reputation, not their political influence. They are a kind of legislation of the world; the execution of decisions is done by governments, and hence needs once more to be affirmed by these. This again assures that the decisions concerning help do not harm the national interest, i.e. does not ask too much of the benefactor society. The decisions do not need to immediately advance this national interest either, and the ideal statesman is aware of that.

When analyzing the example of the duty of assistance I said that it is performed by a number of decent or liberal states. By this I did not, and do not think Rawls did either, mean that the whole state apparatus decides upon the assistance. It is rather political experts and/or maybe experts for the region together with the local experts that would form the most acceptable governmental structure for the society in question. In this three-fold reasoning, impartiality and non-paternalistic help are secured.

Experts are financially supported by specific societies. While Slaughter thinks that the country that hires them should finance them, not seeing a great danger of arbitrary or paternalistic decisions in that case, I would even go a step further and propose a slightly more complicated system of financing the experts. This I think would preserve the impartiality and non-paternalistic decision-making.

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<sup>89</sup>Each kind of network solves different kinds of problems: information networks provide information, dialogue, collective learning and opens the ground for counterfactual thinking and in a way for self-regulation by becoming aware of different problems and cultures in the world; harmonization network contributes to the standardization of the laws and regulations in areas such as trade, environment, public health, etc.; enforcement networks help societies enforce laws its people elected (cf. Slaughter 2002: 167-169). I agree here with the systematization Slaughter made.

In my view, it should not be the case that each society finances one expert but that rather all societies involved pay a certain amount which would then finance these expert-rounds when they are necessary. Thus, different parts of economy can finance different rounds of experts. It would also be recommendable that the industries finance the rounds for the experts on particular issues that are not in their immediate domain, e.g. military industry financing the rounds for culture. In this way a possible objection of bribery is forestalled. By separating financing issues from legislation (the experts) from executors (infrastructure of sovereign societies), a favorable ground is achieved for non-paternalistic assistance. Furthermore, all governments and their industries would continue participating in the endeavor because it might just be that in the future they will need assistance. Thus they would want the assistance to be the most effective possible and the least paternalistic possible.

A more detailed elaboration of this nonideal normative theory sketch is the responsibility of politicians and lawyers, so I leave it to them. This theory has its counterpart the ideal state of affairs of Peoples. Peoples *per se* do not interfere in each other's business and act justly and respectfully towards other peoples that have formally similar political orders. Expert-rounds may in the context of Peoples also fall under intergovernmental or inter-statesmen negotiations. However, as soon as one goes beyond the well-ordered Society of Peoples, expert rounds are necessary since cultural differences and the insecurity felt in front of the unknown cultures tend to lead to paternalistic behavior in international relations, and this again to the instability in the world.

### 6.3. CONCLUSION

In this chapter I hope to have established the final element of my investigation: the principle of solidarity as one of the principles for the ideal theory of international relations. The principle is in my view implicit in Rawls' thought and hence makes his philosophy distinguishable. At the same time, by explicitly stating this principle I give a rich interpretation of Rawls' theory and make it, I think, more expedient for our contemporary world.

This chapter hence postulated the principle of political solidarity as a form of non-paternalistic help based on counterfactual thinking about reciprocity. The principle assumes that there are some benefactors and some beneficiaries, and that the issue they interact on is a political one. Thereby, it is said that the action based on the solidarity principle take place only after human rights have been secured. Human rights have primacy at all times. Solidary actions stop as soon as the issue in question, i.e. a particular art of help, has been fulfilled.

For an action to be non-paternalistic it means that it respects the autonomy and freedom of the beneficiary. The beneficiary needs to have an input in the art of help it receives. Theoretically, the argument is sound; however, its practical deployment is more complicated.

My suggestion here was for the actions of solidarity to be, in praxis, split between independent experts as those who legislate on the way help is going to be done; societies, which are to provide infrastructure for the caring it out and different industries even corporations which would pay for it. By splitting the work into three “braches” the conditions of non-paternalism is secured. The impartiality of the experts also forms the precondition for counterfactual thinking and justifies the financing and execution of expert opinions.



## CHAPTER SEVEN

### CONCLUSION

As previously stated in the introduction, my work is first and foremost a great homage to the most important political thinker of our time, John Rawls. In systematically analyzing and clarifying his thoughts I hope to have shown the greatness of his ideas (though I did not shy away from criticizing his ideas as well). My critique should be taken as amelioration of Rawls' work and in a spirit of it. In that respect, any supplementation to his theory is, in my view, already implicit in Rawls. I essentially sought to prove that his theory of international relations--is set on rightful grounds and uses rightful methodology. He starts with the idea of a well-ordered society as the primary unit of international relations, and uses the methodology of constructivism. However he--still does not fulfill the promised task: to give us principles for the ideal theory of international relations.

Hence my critique speaks to the exact choice of principles, which in my view, all besides the eight principles, belong to the nonideal and not to the ideal theory. Rawls carelessly poses the systematic distinction between the ideal and nonideal, when talking about the international realm. The principles he gives us are actually rules, important rules for the world, as we know it. They are not, however, guidelines for some future world of states but lines of conduct that have proven necessary in the past in order for societies to peacefully coexist. As such, these rules are an unalienable part of international law but not interesting for an ideal philosophical theory.

Instead, here I propose what ideal principles within Rawls' framework could look like. In this way his theory does not lose anything; rather, it gains a final systematic element that makes it more than able to counter objections. Let me summarize the arguments I presented here step by step.

In the introductory chapter I delineated the debate on global justice (cf. § 1). It is important for the reader to understand the problematic I discuss, as well as what the main opposing arguments are. I then explained why I decide to follow Rawls' line of thinking about justice as the first virtue of social institutions and his view of world as one of the different independent societies. Thinking of justice as a characteristic of a political and social system, rather than of individuals, bestows on an individual an active input in creating these institutions and escapes the trap of preconditioned ideas of good. It also allows for the ideas of justice to change in the myth of new political and social events, not taking the change personally but as a matter of thinking in principles. These principles need to be such that the others with whom one coexists can also accept them. This is the idea Rawls tries to defend on a global

level as well. However, he does not argue for a world-state with unified social and political institutions, but for the network of institutions which cross-connect independent well-ordered societies. In order to explain how this may be the case, I took a closer look at Rawls's system of global justice.

He divides his theory into ideal and nonideal (cf. §2). In analyzing these I found that each can be subdivided into its descriptive and normative aspect. Rawls is not explicit on this subdivision; however, I take it to be implicit in his work. The descriptive ideal part depicts the problems in the world, as we know it; normative nonideal theory creates the immediate solutions for them. Descriptive ideal theory states the ideal, i.e. desirable state of affairs while normative ideal theory sets the standards of action for this ideal state of affairs. This four- fold scheme helps us make clear the division of work between politics, law and philosophy. The domain of philosophy is clearly the ideal theory, while law settles the normative grounds for nonideal world, and politics depicts the nonideal.

Rawls announces that he would present us with an ideal theory of global justice where the main role is played by the idealized well-ordered society, which Rawls calls the Peoples. To decipher the final goal of Rawls' theory, it is important to decipher the idea of Peoples (cf. § 3). I maintain that the Peoples are societies in which the political system expresses the idea of justice of its population and hence the society can praise itself with the fulfillment of the idea of self-determination. The population of such a society is satisfied. And the world comprised of these societies is one of satisfied individuals, who all live in their different societies, which have different cultures, and under political systems they all actively participated in establishing. Hence the ultimate concern for Rawls *is* the individual; however, he also respects the cultural differences and does not argue for a world-state but rather for a world of self-determined reasonable societies. Only through accounting for reasonable societies one can truly account for individuals, which share both liberal and non-liberal traditions.

These ideal states are said to cooperate along three different lines: they respect human rights, they make provisions for mutual assistance in the case of some unexpected events and they trade with each other (cf. §5, §6). Rawls' theory is both rational and reasonable. His well-ordered societies are interested in their personal gains, through trade and bilateral or multilateral contracts but they respect others as well and are ready to support them in their struggle for self-determination. This reasonable component is elaborated through what I call here the principle of solidarity: a non-paternalistic assistance based on counterfactual reasoning about problematic international issues. This principle is in my view an unalienable part of any ideal theory of justice since it strikes a balance between realism and idealism in thinking about international relations. Everyday politics have shown that realistic thinking is not sufficient for the world to become a better place, while idealist thoughts are utopian. Being solidary in the sense of counterfactually being able to connect to the issues in question can be an

appealing ideal principle and guideline for world politics. It presupposes conversation, discussion, and openness for other cultures. The idea of solidarity can be interpreted in different ways on the nonideal level: as a way of harmonizing laws or enforcing them or educating people. The bottom line is that there is beneficiary and benefactor and that although in the long run everybody gains, in the short-term, immediate gain is by the beneficiary, while the benefactor is the donor. Solidarity between the Peoples, Rawls' well-ordered societies, can serve as a blueprint, a simplified version of what can mean in the nonideal theory. Peoples agree on a duty of assistance as a way of insuring themselves from possible misfortunes. To think of itself as the possible victim of a misfortune is rather easy among the Peoples since they all have similar political systems and similar political power. Hence the counterfactual arguments are easily built. The picture gets more complicated when we step out of the ideal world and find ourselves in a world of unequal societies that are organized differently both politically and economically. However, taking the ideal of solidarity as a model, I hope to have shown how this principle can be interpreted through governmental networks. The interpretation of the principle of solidarity, along with the interpretation of the principle of humanitarian assistance and commercial co-operation is what international law offers as its rules for getting from where we are now to the ideal world of Peoples. Rawls mistakenly enumerates these rules when speaking about his ideal theory instead of clearly pointing and differentiating between the three necessary ideal principles: the principle of humanity, the principle of commerce, the principle of solidarity. Rules of international law are to be derived from the definitions of these principles.

Now it is left to explain how this systematic elaboration and supplementation to Rawls' makes his theory more fit than those of his opponents for the political events to come.

Rawlsian theory, i.e. my supplemented version of Rawls' theory makes a clear division of labor between law and philosophy. Philosophy guides legal decision. In its guidance role, Rawlsian theory is clear in distinguishing three types of action in the international realm: humanitarian, solidary, commercial. Hence it asks from international law to also respect this distinction and to assign the lexicographic priority to first humanitarian, then to solidary and finally to commercial actions. This avoids confusion on the justification of the means for certain international actions as well as the appraisal international community gets from them. For example, if we hold three-fold distinction of ideal principles right, then there cannot be any intervention justified on the solidarity grounds, i.e. grounds other than basic human rights, since these are not urgent; similarly, no humanitarian actions are done out of solidarity since humanitarian help is urgent, an absolute imperative; solidary help is based on a considerable amount of negotiations and is necessary for overall prosperity, but it is not urgent and in a certain sense it is also voluntary. Many international lawyers do not adopt the distinction and term

almost every kind of help as solidary. Not distinguishing between the two makes room for political manipulation and false appraisal of benefactors for being solidary, when in fact they are merely fulfilling their utterly imperative humanitarian duty.

On the other hand, cosmopolitans, the most vehement philosophical opponents of Rawls, tend to subsume many kinds of assistance under “humanitarian”. Even more so, they immediately ask for the fulfillment of the ideal version of global justice, encompassing the fulfillment of basic and solidary needs. Thereby it is important to distinguish between basic humanitarian needs, which have a priority with Rawls also, and needs that may be fulfilled through solidary actions. On that account the principles for the nonideal theory would also be structured and prioritized. Cosmopolitans do not see this and do not recognize the gradual steps the world needs to go through in order for it to become a better place. The fact of cultural pluralism is to be respected and accounted for in the solidary actions if states are to be satisfied. This, however, does not have anything to do with the respect of basic human rights and also nothing to do with the commercial gain, which comes at the very end of cooperation. Cosmopolitans argue against the descriptive nonideal theory. They argue that the world is an unjust place. However, they do not take the fact of that world, i.e. plurality of cultures as an important component for justice or injustice in the world and hence take the liberal conception of an individual as the sole arbiter in formulating an ideal theory. They then argue for implementing this ideal conception on the world, as we know it today, skipping the gradual steps present in nonideal normative theory. Any new political events that have to do with the plurality of cultures make the cosmopolitan schema even more ideal, with fewer options for truly realistically transitional principles that would lead us from where we are here and now to the cosmopolitan world ideal. The Rawlsian schema on the other hand, stresses the necessity of a dialogue between cultures and allows different interpretations of the three ideal principles which can accommodate both liberal ideal of an individuals and respect for culturally different societies and in that sense makes it more fit for current as well as future political events.

After discussing the theoretical and practical grounds for global justice in detail, I think it only suitable to conclude with a quote from James L. Brierly’s famous work *The Law of Nations*. Brierly, an influential international lawyer who greatly impacted Rawls’ thought (LP: 37 ft. 42) summarizes ill political state of affairs of his day and points to the one possible remedy for it:

“But the rise of the modern state system undermined the tradition of the unity of Christendom and eventually gave rise to those sentiments of exclusive nationalism which are rife in the world today. It is true that side by side with this development there has been an immense growth of the factors that make states mutually dependent on one another. Modern science has given us vastly increased facilities and speed of communications, and modern commerce has created demands for the commodities of other nations which even the extravagances of modern economic nationalism are not able to stifle. If human affairs

were more wisely ordered, and if men were clearer-sighted then they are in seeing their own interests, it might be that this interdependence of the nations would lead to a strengthening of their feelings of community. But their interdependence is mainly in material things, and though material bonds are necessary, they are not *enough without a common social consciousness*; without that they are likely to lead to friction as to friendship. Some sentiment of shared responsibility for the conduct of a common life is a necessary element in any society, and the necessary force behind the system of law; and the strength of any legal system is proportionate to the strength of such sentiment.” (Brierly 1963: 42; italics added)

“Common social consciousness” in the world can and should be achieved only through the interpretation of the principle of solidarity, as suggested here. Table 5. below summarizes once again in a schematic way the structure of the argument here presented.

Table 5.

IDEAL	Normative	Governmental- and expert-networks
	Descriptive	Three principles: 1. Principle of Humanity 2. Principle of Solidarity 3. Principle of Commerce
NONIDEAL	Normative	Principles of international law (Rawls lists eight, there are more)
	Descriptive	Current state of affairs: Supra- and trans-national organizations, e.g. UN, WB, WTO, constrained by “realpolitik”

## APPENDIX

### THE CONCEPT OF SOLIDARITY- HISTORICAL APPROACH

Writing a historical overview of the concept of solidarity is not an easy task. Unlike other concepts of political thought e.g., freedom or equality, solidarity has been left unexamined. It has no straight line of conceptual development that would follow the usage of the term. The conceptual history is unalienable from the political and social context in which it evolves. Depending on the context, the actors of political solidarity, or rather its scope, are different e.g. individuals, states, national or international organizations. It is also important to keep in mind how political solidarity differs from other similarly used concepts such as benevolence, humanity and justice. This is the question of specific domain of solidarity. Finally, there is the question of what motivates solidarity.

Since I am interested in the philosophical content of the concept, this chapter will not deal with all the historical appearances of “solidarity” but only those that I think are significant for its philosophical content. The chapter has four sections. In the first I examine the origins of the term “solidarity” and accordingly the earliest history of the concept, which dates back to the early days of the Roman Republic and its legal system. I will then discuss the role solidarity played and still plays in jurisprudence, before moving on to the concept of solidarity known from Christian teachings, where it is most explicitly linked with notions of charity and brotherly love. In the third part, I will deal with the meaning of the term in modern sociology and philosophy. I distinguish between descriptive and normative values of solidarity. In this section, I look at the concept and its development in the practical political contexts starting in early modern Europe to the current globalized world. The third part is thus split into two parts: The first examines solidarity in the context of the process of democratic state-building in Europe. The concept of solidarity will be treated in its relation to the revolutionary movements that characterized this period. The second part investigates the idea of solidarity within the new challenges of globalized world.

The goal is to test whether we can reach an overall definition of the concept political solidarity; that is, to see what, if anything, the philosophical content of a political solidarity may be, i.e. what duties and rights it assumes and under what conditions.

## 1. Solidarity as a Legal Obligation

The etymological roots of the term solidarity (Fr. *solidarite*; Gr. *Solidarität*; It. *solidarietà*) lie in the Latin adjective *solidus*. *Solidus* had various meanings. It meant something made of the same material throughout; in colloquial language it was used to define something absolute, unalloyed, thorough; in mathematical language it was something three-dimensional; in the language of physics something dense, absence of a void, firm, hard; as a characteristic of specific condition it meant something that is real, lasting and has substance as opposed to something frivolous and superficial (Oxford Latin Dictionary 2000: xx). It has primarily been used in its adjectival form to delineate a positive, stable, continuous characteristic of an object<sup>90</sup>. *Solidus* was purely descriptive and hence descriptive of objects, not of persons or relationships. *Solidus* was first used normatively in the phrase “*obligatio in solidum*” (solidary obligation).

Solidary obligations are obligations of private contract law. According to solidary obligation, each of several debtors became liable for the solid or entire debt, or one debtor binds himself alternatively and separately to each of several creditors. Supposing that there are several creditors and several debtors, each creditor can demand the whole debt from each debtor, and if one debtor pays, the rest are all relieved<sup>91</sup>. Therefore, the legal provision to which the phrase pertains assigns specific way of behaving. However, in Roman times the contract was not always a matter of choice e.g. the contractors could have been born into relationship thus the bounding legal rights did not always correspond to the moral inclinations of the contractors. That has been changed in modern times.

“*Obligatio in solidum*” served as predecessor for numerous contract and heredity laws in Western European countries<sup>92</sup>. However, the notion has been revised to apply only to the acts of conscience, willful consent. The debtors and creditors need to explicitly consent to the obligation; these cannot only tacitly be assumed<sup>93</sup>. The relationship between debtors and creditors is not one of direct reciprocity, one may get the service without investing the whole price of it, or the other way around. Hence the relationship is one of indirect or probabilistic reciprocity. This means that both debtors and creditors, understanding their social position at the time of contract conclusion, can with certain probability establish their costs and their benefits.

Even at this early stage of our investigation we can already distinguish what I take to be three genuine

<sup>90</sup> As a noun it was used as a name for a coin in Constantine's time, cf. OLD 2000: xxx

<sup>91</sup> Francis Wharton, *A commentary on a Law of Contracts*, Kessinger Publishing 2008.

<sup>92</sup> Cf. French Code Civil; cf. German BGB

<sup>93</sup> Code Civil Art. 1202

traits of solidarity. The first is the dynamics of the “I” and “we”. Solidarity binds the individual to the collective, and at the same time distinguishes between “we”, the collective, and “the others”, other collectives or individuals. The legal obligations make it explicit: it is the individual that declares his/herself part of the group of debtors or creditors, and it is the group of debtors or creditors that stands as the opposite to the other. The obligations that thereby arise are positive duties on all sides: the debtors have a duty towards one another and towards the creditors to pay, the creditors the right to demand a payment. As already stressed, this duality of positive duties is the condition of probabilistic reciprocity.

The second important aspect is its character as both descriptive and normative. Legal obligation “*in solidum*” describes a specific relationship between the actors, as the one that is firm, and consistent, but at the same time gives specific guidelines along which this relationship, which is then called solidarity, evolves.

However, solidarity in its derivative form, as an adjective (or adverb): solidary (Gr. solidarisch, Fr. solidaire), refers to the specific characteristic of a person or of his/her way of behaving. In its legal usage, it means that the person is willing to take upon his or herself specific positive duties. The meaning thus remains vague if we do not know the whole context in question, e.g. who the members of the whole group are, and what the obligation is about. Hence the context of “we” is necessary in order to decipher what solidary “I” means.

## 2. Solidarity in Religious Teachings

It is often the case in the modern political jargon, but also in scientific literature, that the terms fraternity and solidarity are taken as synonyms. In this section I analyze the origins of the concept of fraternity in order to establish its relationship to the idea of solidarity.

The concept of fraternity or brotherly love has been long present in Christian teaching. The idea says that all people are brothers and sisters as the children of a God who loves them all equally. Hence everybody is to treat everybody else equally and everybody is to unselfishly “love thy neighbor”. The whole human race belongs to the “brotherhood of men”.

This idea of brotherly love is, according to Christian teachings, to be put into practice through impartial charity. This way of conduct is seen as the highest expression of God’s love. The parable of the Good Samaritan is usually taken as an allegory for Christian ethics of mutual help and charity. The parable goes like this:



"A certain man was going down from Jerusalem to Jericho, and he fell among robbers, who both stripped him and beat him, and departed, leaving him half dead. By chance a certain priest was going down that way. When he saw him, he passed by on the other side. In the same way a Levite also, when he came to the place, and saw him, passed by on the other side. But a certain Samaritan, as he traveled, came where he was. When he saw him, he was moved with compassion, came to him, and bound up his wounds, pouring on oil and wine. He set him on his own animal, and brought him to an inn, and took care of him. On the next day, when he departed, he took out two denarii, and gave them to the host, and said to him, 'Take care of him. Whatever you spend beyond that, I will repay you when I return.' Now which of these three do you think seemed to be a neighbor to him who fell among the robbers?" He said, "He who showed mercy on him." Then Jesus said to him, "Go and do likewise." (Luke 10: 30-37)

Thus, Christian fraternity promoted individual unselfish giving, i.e. actions of charity that are due to everyone no matter what class or race one is. In the nineteenth century, this idea was given a collective and political form. Pope John XXIII in his papal encyclical *Mater et Magistra* (1961), openly called for governments, i.e. for a collective, no longer just individual action, to assist people in need by reducing economic inequalities around the world. It is at this point that the rhetoric of fraternity changes into the rhetoric of solidarity.

John XXIII wrote that the solidarity of mankind and the awareness of brotherhood to which Christ's teaching leads, demands that different nations should give each other concrete help of all kinds, not only to facilitate movements of goods, capital and men, but also to reduce inequalities between them (quoted from Stjerno 2004: 68). Pope John XXIII, in his encyclical further states that "Workers and employers should respect the principles of human solidarity in organizing their mutual relations and live together as benefits Christians and brothers" (John 1964, quoted in Stjerno 2004: 68)

The successor of John XXIII, Pope Paul VI, dedicated his entire encyclical, *Populorum Progression* (1967), to the "Solidaristic development of humanity". He argued that trade and economic advancement must always be constrained by the demands of social justice. He reproached racism and partial economic assistance and basically saw solidarity as a collective action against the mentioned evils. In other words, he viewed solidarity as a collective action that would lead towards the moral development of the world.

With Pope John Paul II, solidarity was made into a dominant theme in Catholic social teaching. He expanded the concept while connecting it to other key concepts in catholic social teachings such as *personalism, love, the common good, subsidiarity, freedom and justice* (Strjerno 2004: 73-75). Personalism means that every human being constitutes himself as a person through his or her relationships with others, and the social character of a human being does not fulfill itself in relation to the state, but is realized in different intermediating groups, beginning with the family and extending it to the other groups. Solidarity begins in the family; it is the way of behaving and feelings that we learn with

the nearest members of the family and then extend to the other communities we are members of. Furthermore, solidarity as a principle of action has to do with the common good. Part of the common good is the care and help for those who are defenseless through solidary actions. And in that sense, solidarity is also connected to achieving social justice. John Paul II discussed all of these relationships to a great extent and in different encyclicals. His major concern was the development of an adequate welfare state with developed labor laws. Such a state would take care of the poor within its borders but would also be strong enough to offer help to humankind in general.

In an unusual for a religious leader, Pope John Paul II discussed the role of solidarity in labor movements: solidarity as a collective action of the workers against exploitation. In this sense solidarity has been praised as an expression of a demand for social justice: "It was the reaction against the unheard of accompanying exploitation in the field of wages, working conditions and social security for the worker. This reaction united the working world in a community marked by great solidarity" (quoted from Stjerno 2004: 70).

Furthermore, he saw solidarity as a relationship between the rich and the poor, in the sense that solidarity is not a diffuse feeling of compassion, but a firm and lasting commitment to the best for all (Stjerno 2004: 71). The affluent have a responsibility to share their resources with the poor, while the poor should actively work for getting themselves out of misery while also demanding help as their legitimate right.<sup>94</sup>

The idea of solidarity emerged into Christian teaching as natural extension from the idea of fraternity. Fraternity is understood as impartial charity or mutual help of all men. When it was noticed that singular, voluntary action was not enough to deal with the needs of the poor and oppressed, the Church made a plea to the collectives, to the states, the employees, and the rich to take a joint action in order to help the poor, exploited and the oppressed. At the same time, solidarity was a guideline for the less advantaged to stick together and fight for their rights.

Hence Christian teaching saw solidarity as a principle of action, a collective action for the sake of establishing some of the goals of social justice. Thereby, the collective that practices solidarity towards its members is understood as a community. The largest and most basic community is that of mankind; however, there are many smaller communities that are gathered around a certain aim like that of a working class, or the community of the poor, or ethnic communities. The underlying idea is that of the

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<sup>94</sup> The idea of solidarity is present in the protestant teachings; however, the term is not used as extensively. In order to express the ideas of assistance to those that are in need, Protestants more often use the concepts of Christian love and charity (Stjerno 2004).

common brotherhood of all men and the final goal is unity and harmony around the world. The Church has not officially played a big role in state politics since secular states and democratic government orders were introduced. However, the Church still influences private morality and still plays a part in the comprehensive doctrines adopted by citizens, and as such must be taken into account in creating a just social or world order. The idea of solidarity advocated by the church needs to be taken into account in defining political concept of solidarity.

### 3. Solidarity in Sociology and Philosophy

#### 3.1. SOLIDARITY AS A PRINCIPLE OF SOCIAL COHESION

The father of modern sociology Emile Durkheim, in his doctoral thesis titled *Division of Labor in Society* (1893), described the phenomena that keeps society together and named it solidarity. He distinguished between mechanic and organic solidarity.

Mechanical solidarity comes from “a certain number of states of conscience which are common to all the members of the same society” (Durkheim 1933: 109), i.e. it based on the likeness among the individuals. It is largely dependent on common rituals and routines. Mechanical solidarity was common among prehistoric and pre-agricultural societies, and becomes ever more unusual as modernity increases.

As labor becomes more divided, people become more individualized and at the same time more mutually dependable. With a great technical advancement of the eighteenth and nineteenth centuries and with the development of the liberal political spirit, it became less likely that the whole population was to share the same moral beliefs and overall values. However, these dissimilarities again force people to cooperate and stick together. The grounds for it need not be based on an economic gain, i.e., Durkheim argues vehemently against utilitarianism and finds a ground for social cohesion in a necessity of people to be bound to the association where one’s own weaknesses are to be compensated. Organic solidarity got its name from the analogy with the behavior modus of an organism: each organ does its part for the sake of an overall good functioning.

However, at no point in the book does Durkheim explicitly define solidarity. He only describes social behavior that he then titles “mechanic and organic solidarity”. The best way to decide with what kind of society we are dealing with is to look at its laws. They are a mirror image, a tangible aspect of the phenomenon of solidarity. Laws of pre-modern societies, with less devised labor and one “*conscience communautaire*” have predominantly repressive laws that punish the infringement of common beliefs. Modern societies, organized through, or based on organic solidarity cherish civil laws with its

instruments of interdependence e.g. the institution of contract. They generally provide not for repressive punishment but for retribution and compensation. Thus, according to Durkheim it is the relationship of solidarity, mechanical or organic, which is the basis, the underlining idea, of any legal system.

Durkheim's approach is purely descriptive and does not differentiate between an illegitimate solidarity e.g. mafia-solidarity from a legitimate one e.g. solidarity among the citizens of a nation state. Furthermore, Durkheim does not indicate which change in solidarity is to be legitimately accounted for through laws; he does not answer the question whether a change in laws must always be followed by a change in the organization of social structures and hence whether the solidarity can be instrumentalized through law<sup>95</sup>.

However, Durkheim's descriptive notion of solidarity gives us three further characteristics of the concept. First, the context of "we" has been opened to the whole society. Solidarity is presented as a relation among individuals with no personal ties and even no similar interests: solidarity through or because of dissimilarities. Modern society is explained as an organism with different organs all of which have different purposes. They have one thing in common, however: the urge for self-success. This is again only possible through the good coordination of the whole organism. Mistakes are not stigmatized but enlightened, i.e. educated through retributive laws. Second, Durkheim's stresses the importance of laws for solidarity in the society. Hence he points that an individual always needs the institutionalized protection of his or her lifestyle: society as a guaranty of individual progress. The need for security and a willingness to contribute is an important trait of solidarity.

Durkheim does not give us a value judgment about which of the societies is better, nor is he interested in explaining how societies come about, or how can solidarity be influenced *ex post* the creation of the society. Durkheim is simply looking at the historical events and describing the state of affairs. Solidarity in Durkheim's account is mirrored through legal systems of society. How these laws should be and how or whether they can influence the strengthening of social solidarity is left open by Durkheim.

### **3.2.SOLIDARITY AND PHILOSOPHY**

What we gained so far is a descriptive character of the notion of solidarity. It is a relationship between an individual and a group. The parties participate in it because they want to realize their conceptions of a good life and for that they need a support of others.

As indicated in the last section, the question of which of the cooperative relationships should be chosen, how they should be supported, and how a common protection should be organized is still left

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<sup>95</sup> H.L.A.Hart noted that Durkheim's argument cannot be normatively taken seriously (cf. Hart 1967)

open. This is the question of normativity of solidarity, and hence a question that political philosophy needs to answer.

However, philosophical literature has been rather scarce when it comes to solidarity. We find the some explicit reference to the term in teachings of Jürgen Habermas (cf. Habermas 1986) and Richard Rorty (cf. Rorty 1989), as well as in modern communitarian teachings. Nevertheless, I think that liberal political doctrine contains a notion of solidarity as well. For the purpose of this work I follow the notion of solidarity as I think it may be found in modern communitarian and liberal debates.

Communitarian philosophy, as we already seen in Chapter I, can be perceived as one which stresses the importance of the community in distributing rights and duties between it members. The fundamental criterion for the communitarians seems to be geographical closeness and possibility of immediate interaction. Hence any duties an individual or a community might have beyond the community's limits depend again on the existence of concrete interaction with the third party. Communitarians see solidarity as one of the natural bonds among the co-citizens that as such do not exist beyond the community, and hence the feeling of solidarity justifies the different treatment of others who do not belong to the community (cf. Sandel 1982). They often speak about the solidaristic communities, as if solidarity were that specific something that exists before the very formation of a juridical system of the state. Solidarity, according to these authors is a feeling that provokes a way of action due to the common value-order that conditions the jurisprudence of the state. Solidarity is not the result, but a starting premise whose existence and rightness is not questioned. Accounting for the feeling of solidarity is a necessity of specific circumstances, and it cannot be universalized. However, it is not clear what the origin of solidarity is. It exists in every society and keeps it together. Some communitarians see it in the culture or tradition or national characteristics of the society. It is rather under-defined but still a rich concept.

In modern liberal theories solidarity also plays a role, though not as explicit as in communitarian ones and with quite a different task. Solidarity is not something that decides upon the norms of society in advance and in the light of which society holds together. The liberal version of solidarity is a concept that refers to the minimal agreement among citizens that is to be of an advantage to all. This means that cooperation between individuals in the society goes beyond the "modus vivendi"; it further means that the advantages individuals are getting are not equal. It is a rather exclusive concept; it excludes everything that does not belong to the political life of an individual and applies solely on the overlapping values of a pluralistic society. Individuals realize that no matter what their personal goal may be, they share one common task: to succeed in their personal goals. This is only possible through the support of others. Hence solidarity is one of the principles. It results from the social contract among free and equal

individuals; it is not given in advance as a value that determines the outcome.

Social contract is a method of justification of government. Individuals agree on the legal and moral obligations they are to take upon themselves in the society and expect from the society to assure their rights. Hence from social contract theorists we learn that the principles of cooperation need to be agreed upon by everyone in the state of nature. Therefore, the normative principles for society are to be formulated *ex-ante* the actual coming into existence of a society; the point being to create a social system that will ensure the undisturbed development of each individual that would do justice to everyone, no matter what social characteristics the person actually has. These principles are then based on the empirical facts about the human psychology on their face value, and not on the contingent roles of individuals in the society and values they may or may not affirm as already formed citizens. Hence, social cooperation, mutual support between individuals and guarantee of undisturbed development of an individual from the part of society, are the characteristics of liberal political system. The system is neutral towards any particular conception of a good life, and is formulated in such a way as to support all. The liberal system makes a distinction between the political and personal world, or rather between public and comprehensive views; the former being the view connected only to the political institutions while the latter is connected to the overall personal view on what the good life is. Political solidarity is hence connected only to the former, political or public view. It is an exclusive concept and means mutual cooperation and support of the individuals in the public sphere. Each individual invests in the society and each gets at least the protection of his undisturbed development that is protection of his/hers negative freedoms, while some even get concrete support for achieving their social independence. This idea is already present in Kant's writings. Kant does not go into greater detail about how the others should be supported. He mentions the necessity of a system of taxation in order to support the organizations providing for poor people, for foundling homes and church organizations, through these provisions society can be maintained in perpetuity: "and for this end it (people's will) has submitted itself to the internal authority of the state in order to maintain those members of the society who are unable to maintain themselves" (6: 325-6)

For John Rawls, a twentieth century Kantian, solidarity corresponds to the second principle of justice, also known as the difference principle. This principle mitigates the social and economic inequalities in the society in the way that any economic advancement of the citizens that are "better-off" should be followed by the proportional advancement of those who are "worst-off". Rawls explicitly uses the model of the original contract in order to establish *ex-ante* the principles of justice. The parties in the original position agree to the principles of equal basic liberties and opportunities and on the positive economic support for those who ex-post the formation of society end up in a non self-sufficient position.

Thus, if we are to follow communitarian teachings, solidarity is an underlining value and society's constitution should be modeled to preserve this value, whatever it may be. Solidarity dictates the political formation of society since it is the glue, the key element for the sake of which society keeps together. Solidarity itself is not normative but it orientates the norms of society. The liberal philosophers on the other hand see solidarity as a concrete principle of justice. Genuine solidarity is then ex-ante: before the origin of the society the citizens agree upon the way they are going to be helping each other. This solidarity is impartial and does not take into account personal preferences rather just the general idea of achieving the personal good through helping the community at large. Such an idea of solidarity can reviewed ex-post, if the ex-ante provision for mutual help does not adequately deal with the existing problems.

#### 4. Solidarity and State-Building

##### 4.1. SOLIDARITY AND REVOLUTIONS

Up to this point I have elaborated the descriptive and normative aspects of the concept of solidarity as it appears in different in sociological, philosophical theories and jurisprudence. It is obvious that solidarity is not a simple concept; it changes its meaning and points of reference according to context. Now I pose the question of its practical implementation; that is, when do we say that we need more solidarity and how does it come about. This question pertains to the ex-post political domain, i.e. when the nation state is already formed and when the norms of society need to give a concrete practical answer to the challenges of new practical political events. In other words, the question here will be how does our current gained knowledge about the descriptive and normative roles of solidarity account for the non-ideal, i.e., empirical political state.

Throughout political history, solidarity has often been connected to revolutionary struggle. French lawyers used the term *solidarite* from the sixteenth century onward to refer to common responsibility for debts incurred by one of the members of a group, as was already stated in section 1. French historians of language have affirmed that revolutionary leaders such as Mirabeau and Danton used the term *solidarite* in their speeches to refer to the meaning that went beyond the legal context. With this term they referred to the close relations and feelings of belonging among the members of voluntary associations and groupings, feelings that are analogue to those that exist within the family. During the revolution of 1789, the Jacobins made *fraternite* a key concept together with freedom and equality. *Fraternite* became the popular expression of lawyers' dictum: all for one and one for all. Support for one another, fraternity, brotherhood or solidarity came to denote a feeling of political unity. The differences

among the revolutionaries in their occupations or wealth were downplayed, and the concept was a part of a practical task meant to change society and its institutions<sup>96</sup>.

It was used again in a similar way during the Revolution of 1848. Then the demands were similar to those of revolutionary France, i.e., no arbitrary legislation, better social standards, and respect for each man's freedom. In the nineteenth century, the Polish revolutionary movement was led by the workers trade union called Solidarnosc (solidarity). The inhumane working conditions were the ultimate trigger for this uprising. Eventually the movement led to the establishment of a democratic government in Poland.

These examples tell us that "solidarity" not only describes and norms political society formally in its ideal state; it also has a role in correcting its non-ideal empirical conditions. If we could imagine a perfectly just society where respect for liberty and equality is assured through common solidary institutions, i.e. positive duties towards one another, there would be no need to talk about solidarity in practice. Solidarity discourse would be left solely for academic salons.

However, that is not the case. Reality is full of contingent empirical facts that express a dissonance between the group and the individual. The implementation of justice principles, whether they are liberal or communitarian, does not always flow smoothly. Many conditions may arise that either do not make the ex-ante norms possible to implement or make them inappropriate. In the un-ideal conditions, implementation of norms can mean redefining them all together or setting them anew. This is possible only through the joint action and mutual support of those who want change to happen. This is an ex-post notion of solidarity, which strikes a balance again between personal investment and group assurance; it serves as a corrective measure and as a constraint when things start getting out of hand.

State building in the eighteenth and nineteenth centuries was connected to the revolutionary process, where solidarity or fraternity was explicitly stressed. Nowadays, revolutions are rare but the change of political paradigm happens through the joint struggle on the election polls. New political challenges will always arise; it is a matter of ex-post solidarity to answer to them.

## **4.2. SOLIDARITY AND GLOBALIZATION**

It is one thing to deal with the unfavorable conditions within the nation-state and to appoint ex-post measures that would correct or change the national justice paradigm; it is another to deal with global challenges, i.e. challenges that go beyond the nation state and try to answer to them in the manner of joint struggle. It is also obvious that especially in the myth of global problems, joint reaction is

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<sup>96</sup>Subtle difference that may exist between the concepts of solidarity and fraternity, if at all, is not of any substantial importance here.



necessary. However, it is not clear who should join whom and what kind of principles they should be setting, i.e. to whom duties and obligations are to be assigned and with what jurisdiction.

Globalization as a social, political and economic process may be characterized as follows:

Globalization reduced (or removed) the importance of national borders in the expansion of market, free flow of capital, investments, goods and services. Transnational corporations interested in sole profit became the economically powerful players that can even influence state governments and international organizations since they can move their capital if their expectations are not met. This leads governments to make policy arrangements that are conform to the market, not to the well-being of citizens.

Expansion of markets and technological and communication interconnectedness brought numerous environmental and social problems: global warming of the atmosphere and air pollution do not respect national borders; wars and natural disasters are responsible for the flights of people across the borders and the disruptions of labor markets, safety, culture and identity of other nations; terrorism can occur anywhere; genetically modified food can easily spread; increase travel spreads diseases and infections from one country to another. A further point is that catastrophes and problems of any kind even if happening within the national borders, do not stay hidden but are known to everyone.

Politically speaking, globalization leads to the growth of international and transnational organizations and networks, both in the public and in private sector (World Bank, International Monetary Fund, United Nations, etc.). They have been mostly influenced by wealthy nations but represent potential arenas for political discourse and new alliances. A great potential tool for bringing political discourse to the forefront is the establishment of many transnational non-governmental organizations (Amnesty International, Human Rights Watch, Transparency International, etc.).

Jurisprudence has also been globalized. There is a visible increase in international law and regulations. This poses a problem of subsidiary and concordance with national regulations but it also represents an area where discourse can lead to more justice.

One has to keep three things in mind when it comes to globalization: there is a proliferation of actors on the global scene, proliferation of common and genuine problems and finally no centralized body with coercive powers to coordinate it all.

This makes the theoretical questions about the principles of global cooperation very difficult to solve. It is also clear that pure abstinence from harming (negative duties) will not solve the problems, it just may stop it from becoming bigger. Some positive duties are necessary, in the sense of international or transnational reciprocal support.

The duties and obligations that states, organizations and individuals have towards one another on a global plane and which are not disputable are for once human rights protection-it is an overall standard of behavior for all global actors and secondly commercial relationships of the tit-for-tat variety. The latter characterize the relations among sovereign states or within international corporations.

Now problems such as environmental protection, poverty relief, maintenance of peace and development and protection of world heritage are such that it is clear that neither a strict obligation to humanity, nor the expectation of profit can help solve them. What is needed is a joint action to which everyone contributes without awaiting direct or even simple proportional reciprocal gain. In other words, what is needed is a commitment to joint action and readiness to help even if the ex-post situation is favorable for a particular benefactor political entity. Hence what is needed for remedying the challenges of globalization is solidarity on a global level.

The domain of global solidarity is somewhat clear; what is not clear are the actors of solidarity. How may one expect a dysfunctional nation state to be a reliable, solidary partner on the international level? One may not. Hence on the global plane what we experience is an ex-post solidarity among different actors (nongovernmental organizations, different bodies of the intergovernmental organizations, etc.) and ex-ante and ex-post regional solidarity among the well-ordered or similarly ordered states. This needs some further explanation.

The problems that arise in empirical non-ideal conditions can, due to the non-existence of global institutions, be rectified only through spontaneous ex-post solidary actions between different global players, out of which the nation-state is still the most solid. The nation-state is mostly a key element of international organizations and since global challenges also influence internal affairs, the nation state has an interest in solving them. It also has a best infrastructure for fast security or monetary reactions. There are two possible solutions to the global challenges, either a joint action creates new realities, i.e. new international legal bodies that would deal with similar problems in the future, or it corrects the existing one. The existence of the group may consequently be taken to be a permanent union or just a temporary one which depends on the existence of a problem in question. A good example for the ex-post temporary solidarity is the creation of an emergency relief fund for the people of Haiti following the 2010 earthquake. The fund gives assurances to individuals in order for them to continue getting their lives back on track. An example of an ex-post solidarity measure of a permanent union is the debt relief European Union offered to Greece in 2011. Here, the measure led to the reconsideration of the principles of mutual support within the Union and to the formation of the ex-ante agreed principles on mutual support. In the myth of new unexpected events the starting paradigm needed to be changed.

## 5. Conclusion

Let us summarize what has been said so far. First, the reader must have noticed that I did not try to stress the difference between fraternity and solidarity. I find interchangeability is justified in the context of the modern concept of solidarity, i.e. from the eighteenth century onwards. This new “solidarity” comprises two components that have traditionally been connected either to fraternity or to solidarity. These two components are altruism or humanism, and consequently contract-making. This needs to be further explained.

Both of the traditional concepts, fraternity and solidarity, denote some shared obligation between the people, their commitment to mutual aid and their shared responsibility. During the French Revolution, *solidarité* was an official term that denoted the same as what the street jargon called *fraternité*: the joint fight of early modern artisan guilds for a society that provided a decent life; a fight that was first and foremost based on the unsatisfying social and work conditions and the acknowledgement by people that only through joint effort can they change their position. The state was not treating them as they thought they deserved and so they revolted by fighting together for a society that respects the freedom and equality of all and is based on fraternal principles.

Solidarity has its conceptual origin in jurisprudence, whereas fraternity is based on a religious Christian teaching. This means that solidary obligations are confined to a specific group of people and are particular in their nature. Fraternity leaned on the idea of common brotherhood of all men, who are all children of God. The idea of fraternity in its religious interpretation is universal in scope and similar to the philosophical idea of humanity.

The law in question strictly specifies the obligations that arise from the legal idea of solidarity. They are generally speaking similar to the “tit-for-tat” type of obligation i.e. each individual by signing the contract knows what his/her rights and duties are. Solidary obligation says that all debtors are equally liable for the debt and all the creditors equally able to request the payment. Legal solidarity obligation is based on proportional not direct reciprocity but there is no uncertainty about the fulfillment of the obligations.

Fraternal obligations in their universalistic aspect are the obligations owed to humanity *per se*. They are not situation bound, nor limited in scope; they are not even limited in their content, since the Christian teaching says that one should always help. However, it is exactly in Christian teaching that we find the shift of terminology. It was during the mid-twentieth century when the Church recognized that Christian love also needed governmental support and papal encyclicals began calling for government action to assist people in need and to reduce economic inequalities in society and the world. The

solidarity of mankind and the awareness of brotherhood to which Christ's teaching leads, demand that the different nations should give each other concrete help of all kinds, not only to facilitate movements of goods, capital and men, but also to reduce inequalities between them workers. Employers should respect the principles of human solidarity in organizing these mutual relations and live together with employees as benefits Christians and brothers. The essence of the Catholic concept of solidarity was this: compassion and collective action called for help for the poor and the underprivileged. Individual charity was not enough because the needs of the poor were (are) too massive. Analogous to the religious and legal concept of solidarity, a political concept of solidarity has also been formed.

On the other hand, fraternity as a motto of revolutionary France expressed the plight of a certain class in society; it was not the expression of humanity at large. However, as liberal democratic ideas advanced, the specific cases of revolutionary guilds became a standard of manhood and fraternity as an expression of humanity *per se*. We read in the opening paragraphs of the human rights declaration that humans are born equal and since endowed with reason should act towards one another in the spirit of common brotherhood.

The concept of solidarity that has been treated here is definitely seen as a necessary condition for decent living in political community and hence universalistic in its scope, but still a lesser condition than the respect for humanity at large.

Hence the terms, solidarity and fraternity, can be used interchangeably if the context points clearly enough to what is meant by fraternity or consequently by solidarity. However, I think that today it is more suitable to use the expression solidarity instead of fraternity, in order not to unnecessarily enrage feminist movements.

That being said, I summarize the main characteristics of the concept of solidarity as they were presented through this historical excursion:

1. Solidarity is a principle of action. It bonds an individual to the group and group to the individual. Individual and group are ready to stand in for each other. The reason for the mutual assistance is either a belief in the common goal of a contractual action (legal notion of solidarity) or love of mankind, whose prosperity can also be seen as a common goal (religious notion of solidarity).
2. Solidarity among the members of a society is necessary for the stable and long-lived functioning of the society. Solidary behavior of the members of the society is the reason why societies do not fall apart (Durkheim's mechanic and organic notions of solidarity).
3. If we ask what solidary behavior in a society *should* look like, we are asking about the relationship between solidarity and justice. The answers are different. A philosophical concept of justice may

presuppose some concept of solidarity and hence be determined by that concept, as in communitarian thought. On the other hand, a concept of justice may be value-neutral as in liberal thought, and opt for such a state-order which would be producing solidary action, that is will be based on principles that would ask for mutual cooperation and mutual help due to necessity for protection of the value-pluralism. Solidarity would then be one of the principles of justice.

4. In the contingent empirical world, where the form of justice is not always respected or clearly elaborated, solidarity works like a surrogate for it. When there is a misbalance between what the society asks from the individual and what it gives to this individual in return, the members of certain groups are ready to stand in for each other. Solidarity seeks to establish or to voice out the struggle for achieving justice (revolutionary aspect of solidarity).

5. In the global realm there is also a need for cooperation, assistance, help, and donations. It is obvious that global problems can be dealt only with the joint action. However, since the concept of global justice is not a simple and unified idea, and since the principles of global justice are disputable it is still not obvious what this joint action should look like: should the donating, i.e. assisting parties be giving unselfishly and impartially according to the Christian ideas of charity and benevolence, not awaiting anything in return; or should global problems be dealt with on the level of contracts where proportional reciprocity is awaited? The first idea is closely connected to that of the protection of human rights that is supposed to be assured impartially, while the second is connected to the businesslike negotiation of equal parties. None are adequate analogous to the concept of solidarity in the nation-state, which seems to be halfway between benevolent giving and contractual reciprocity. Hence, the global realm also needs a middle-way solidarity. My interpretation of it I hope to have established in Chapter 6 of this work.

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